United States Court of Appeals

for the Second Circuit

PETITIONER'S REPLY BRIEF

NO. 76-4274

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner,

v.

ORTIZ FUNERAL HOME CORP.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570.

UNITED STATES COURT OF APPEALS
FILED
MAR 14 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Ortiz Funeral Home Corp.,

Case No. 2-CA-13804

7. 7.75	Charge filed
8.29.75	Complaint and Notice of Hearing dated
10. 9.75	Respondent's Answer dated
1.16.76	Regional Director's Order Rescheduling Hearing dated
1.28.76	Hearing opened
1.29.76	Hearing closed
5.19.76	Administrative Law Judge Benjamin B. Liptons' Decision issued
6. 2.76	Administrative Law Judge's Errata dated
6.25.76	Respondent's Exceptions to Administrative Law Judge's Decision received
8.16.76	Decision and Order issued by the National Labor Relations Board

it operations, derived gross revenues therefrom in excess of $500,000.

(d) During the same period, Respondent purchased goods and materials valued in excess of $25,000 which were shipped directly to it from outside the State of New York.

3. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

4. Local 1034 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. Michael Ortiz is, and has been at all times material herein, the president of Respondent, acting on its behalf, and an agent thereof.

6. On January 10, 1975, Local 1034 filed a First Amended Charge to an original Charge filed December 3, 1974, in Case No. 2-CA-13540, alleging violations of Sections 8(a)(1) and (3) of the Act by Respondent and requesting issuance of a bargaining order.

7.(a) On January 24, 1975, the Regional Director, Region 2, of the National Labor Relations Board issued a Complaint in Case No. 2-CA-13540, alleging, inter alia, the commission of violations of Sections 8(a)(1) and (3) of the Act by Respondent.

(b) The aforesaid Complaint further requested the entry of a remedial order requiring Respondent to recognize and bargain with Local 1034 as the exclusive collective bargaining representative of all employees employed by the Respondent at its Southern Boulevard location and at its eight other locations in New York City, exclusive of all office clerical employees, confidential employees, embalmers, professional employees, guards, watchmen, and supervisors as defined in the Act, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

8.(a) On March 21, 1975, Respondent and Local 1034 entered into a settlement agreement in Case No. 2-CA-13540, which agreement was approved by the Regional Director, Region 2, of the National Labor Relations Board on April 7, 1975.

(b) In the aforesaid settlement agreement the Respondent, inter alia, agreed to comply with the terms of, and to post a notice to employees containing, inter alia, the following requirement:

> WE WILL recognize and bargain collectively with Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the unit including attendants, floorpeople, receptionists, interpreters and porters but excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the Act with respect to wages, hours and other terms and conditions of employment, and execute a written agreement with the Union incorporating any agreement reached.

(c) Pursuant to the terms of the settlement agreement, Respondent met with Local 1034 on or about March 24, 1975 and granted recognition to Local 1034 as the exclusive collective-bargaining representative of Respondent's employees in the unit described above in subparagraph (b), a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act, and at all times since said date Local 1034 is, and has been the recognized collective-bargaining representative of said employees within the meaning of Section 9(a) of the Act.

9. Subsequent to the signing of the settlement agreement described above in paragraph 8, representatives of Local 1034 and Respondent met and bargainined collectively with respect to the terms for a collective bargaining agreement covering the unit of employees described above in subparagraph 8(b).

10. On or about April 29, 1975, agreement was reached between the bargaining representatives of Local 1034 and Respondent's representative, Michael Ortiz,on all the terms for a collective-bargaining agreement covering the employees in the unit described above in subparagraph 8(b).

11. Since on or about May 1, 1975, representatives of Local 1034 have requested Michael Ortiz, Respondent's representative, to sign a written agreement embodying the terms and conditions of employment for employees in the unit described above in subparagraph 8(b).

12. Since on or about May 2, 1975, and thereafter, the Respondent, by Michael Ortiz, has failed and refused to sign the written agreement described above in paragraph 10.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

ORTIZ FUNERAL HOME CORP.

and

Case No. 2-CA-13804

LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

ORTIZ FUNERAL HOME CORPORATION, for its answer to the complaint herein alleges:

FIRST: Denies knowledge or information sufficient to form a belief thereof as to paragraphs numbered "1", "2"(a), "2"(c) and "2"(d), "4", "7"(a).

SECOND: Denies each and every allegation contained in paragraph numbered "3", "10", "11", "12", "13", "14" and "15".

N. GEORGE MERCIL
Attorney for Ortiz Funeral Home Corp.
253 Broadway
New York, New York 10007

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Second Region

In the Matter of		
ORTIZ FUNERAL HOME CORP.		
and		Case No. 2-CA-13804
LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.		

26 Federal Plaza
New York, New York
Wednesday, January 28, 1976

The above-entitled matter came on for hearing pursuant to notice at 10:50 A.M.

BEFORE:

BENJAMIN B. LIPTON, Administrative Law Judge

APPEARANCES:

FRANK H. MC CULLOCH, ESQ. National Labor Relations Board, 26 Federal Plaza, New York, New York, appearing as counsel for the General Counsel

N. GEORGE TURCHIN, ESQ. 253 Broadway, New York, New York, appearing on behalf of the Employer

RICHARD A. WEINMANN, ESQ. 221 Park Avenue South, New York, New York, appearing on behalf of Local 1034.

C O N T E N T S

Witnesses	Direct	Cross	Redirect	Recross
MICHAEL FLEICHER	38	62	72	74
DOMINGO VARGES	81	101	110	111

E X H I B I T S

GENERAL COUNSEL	FOR IDENTIFICATION	IN EV.
1-A through 1-G	4	4-5
2-A and 2-B	37	
3	45	55
4	86	87

RESPONDENT		
1	78	

PROCEEDINGS

JUDGE BENJAMIN B. LIPTON: This is a formal hearing before the National Labor Relations Board in the matter of Ortiz Funeral Home Corp., case number 2-CA-13804.

I am Benjamin B. Lipton, the Administrative Law Judge who will preside at the hearing.

Will counsel state their appearances for the record? General counsel?

MR. MC CULLOCH: For the General Counsel, Frank H. McCulloch.

JUDGE LIPTON: Respondent?

MR. TURCHIN: For the respondent, N. George Turchin, 253 Broadway, New York, New York.

JUDGE LIPTON: Charging party?

MR. WEINMANN: Richard A. Weinmann, 221 Park Avenue South, New York City 10003.

JUDGE LIPTON: All right, Mr. McCulloch, you may proceed with the formal papers.

MR. TURCHIN: Before Mr. McCulloch proceeds, I have a motion to make before we proceed, because I believe it goes to the question of whether or not this proceeding can continue and if you will hear me for a moment, I think you will understand the substance of the motion. This has nothing to do with the case, it has to do with cases Title Guaranty and --

what are the essential issues or what is the essential issue without reiterating what is already formally stated in the complaint?

MR. MC CULLOCH: Before I make a statement, I, in discussion with counsels for respondent prior to the opening of the hearing, there was a suggestion that there might be stipulations as to admissions or an amendment of the answer to the complaint.

There have been certain denials made to paragraphs of the complaint which I have been led to believe might be changed.

JUDGE LIPTON: All right, go ahead.

If you have the stips, by all means. I was going to raise some of these questions myself.

If you have stipulations, that might be the most expeditious way to handle this.

MR. MC CULLOCH: If my information is correct, I believe Mr. Turchin and I would stipulate to the admission of paragraphs two, three, four and 7-A which had previously been denied in one respect or another.

JUDGE LIPTON: Is it so stipulated, Mr. Turchin?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: The stipulation is admitted. Let me see, if you will hold it for a moment. What about paragraph one?

MR. MC CULLOCH: I felt that the General Counsel's papers were sufficient to prove this, but if Mr. Turchin will

change his denial --

MR. TURCHIN: I will so stipulate to paragraph one.

JUDGE LIPTON: All right, paragraph one as well.

You understand, Mr. Turchin, that failure to answer is tantamount to an admission, as to paragraph five.

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: The same as to paragraph six.

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: And 7B, there is no answer. That is taken as an admission under the Board's rules. Is there anything further, Mr. McCulloch?

MR. MC CULLOCH: At this point from your conversations, I would say there is nothing further.

JUDGE LIPTON: Well, I think I have specified certain paragraphs and we'll add paragraph nine which has no answer and is taken as an admission.

Now, we'll get back to the opening statements.

Mr. McCulloch.

MR. MC CULLOCH: Your Honor, the facts and issues involved here are basically simple. General Counsel contends that towards the end of March, about March 24, 1975, respondent recognized the charging party Local 1034 as the exclusive bargaining agent of its place as described in the unit, subparagraph 8B of the complaint. Respondent entered into negotiation concerning wages, rates of pay,

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negotiations, as against the 21 employees that were employed at the time of the negotiations.

JUDGE LIPTON: Let me see if I understand you. I asked what would be the difference in numbers.

MR. TURCHIN: The difference would be 17. 18 or 17.

JUDGE LIPTON: It is a difference of 18 or 17 employees.

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: And then you are saying that this is the relevant issue. And this is why the case is here. Really that the company agreed to everything that was negotiated, all the terms, conditions of the contract. The only dispute involved the unit.

MR. TURCHIN: There were certain small matters that had not been agreed upon. There was a negotiation session in June and one subsequent to the time the charge was filed. We repeat to your Honor that the rules and regulations and small issues that were not completed, could have been completed.

In other words, what we are saying is there were some issues but they were not material issues. The only material issue was the number of people included in this particular unit.

JUDGE LIPTON: What was the nature of the discussion concerning the unit in the bargaining negotiations, did you

put the unit aside and proceed to bargaining about wages and hours and fringe benefits?

MR. TURCHIN: The question of the unit came up, sir, when a party who was not present at the settlement negotiation, was apprised of the fact that the unit was not what he was representing the unit to be, at which time this party reviewed this situation, made some remarks concerning it, stated that he didn't understand and how this came about was beyond his comprehension and that my client, in spite of the fact there was some question, should sign the agreement and my client was told, during the negotiation sessions, if there was any question as to the unit, that would be resolved by arbitration.

My client said he would not go along with this procedure unless the unit was specific and the parties and the individuals were set forth who were included in the unit.

JUDGE LIPTON: In other words, the position finally taken by your client, the company, was a refusal to sign anything until the unit question was resolved.

MR. TURCHIN: Absolutely.

JUDGE LIPTON: Were you personally involved in the negotiations?

MR. TURCHIN: No, sir, I came into this matter, sir, only when this particular complaint was issued. I had nothing to do with the respondent. I had nothing to do with

any prior time, to the time that the complaint was issued, sir.

JUDGE LIPTON: Let me ask a further question.

During the negotiations, was the respondent represented by counsel?

MR. TURCHIN: No, sir.

JUDGE LIPTON: Thank you. Do we have anything further on this?

MR. WEINMANN: May I be heard on this?

JUDGE LIPTON: Yes, Mr. Weinmann.

MR. WEINMANN: I believe counsel has set up a straw man here.

We have no quarrel with the bargaining unit and never did.

As far as we are concerned, we are happy with the language of the stip of settlement of the prior Board case. At that time there was some 16 to 21 employees known by both sides to be in the bargaining unit.

In fact, that initial case involved something like eight discharged employees which is already twice the number of people who counsel says now belong in the unit. So it is a matter of semantics. We have no quarrel with the bargaining unit at all. The only issue ever raised and this came up after the contract was agreed upon, as the evidence will show, is a question of how many employees should be in the bargaining unit and the burden was put by

the employer, ultimately, on the union to furnish the names of the employees whom the union said should be covered while in the meanwhile, the employer had terminated all but three of the original batch of employees and it was the employer's contention that only the three union people who had originally been part of the organization were the only people who should be covered, but this was all after the negotiations were concluded and that is the only position the employer ever took after the negotiations until today.

And incidentally, the court case merely decided that this matter, the matter was for the board to decide on the contract and not for arbitration.

JUDGE LIPTON: Will you remain standing, Mr. Weinmann?

MR. WEINMANN: Yes.

JUDGE LIPTON: You are referring to the Supreme Court case alluded to by Mr. Turchin?

MR. WEINMANN: The New York Supreme Court case.

JUDGE LIPTON: The final decision was that --

MR. WEINMANN: The matter is referred to --

JUDGE LIPTON: This is preempted by the Board. It is actually a Board case.

MR. WEINMANN: It wasn't said, but in fact it was --

JUDGE LIPTON: This is your interpretation?

MR. WEINMANN: Yes.

JUDGE LIPTON: Was there a stay of arbitration?

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MR. WEINMANN: That's correct.

JUDGE LIPTON: And the basis for seeking to have the unit question arbitrated?

MR. WEINMANN: No, your Honor --

JUDGE LIPTON: Just a moment. Well, let me see, I don't know that it is particularly significant here, but as described by Mr. Turchin, the union did move to have the matter of the unit question resolved by arbitration.

MR. WEINMANN: That is incorrect, your Honor.

JUDGE LIPTON: All right, what happened?

MR. WEINMANN: The nature of the arbitration which we sought was the failure of the employer to contribute to the funds, the contributions that were necessary to be made on behalf of the employees. That was the only issue we sought and we relied on an agreement which we had, which we claim that pursuant to the Civil Practice Laws and Rules of the State of New York would entitle us to proceed to arbitration.

We said there was an agreement even though it was unsigned. Well, the court wouldn't accept that and the court said that is a matter for the Board to determine.

JUDGE LIPTON: All right. Your position is that the unit question was really not solved there, it was just a matter of contributing to a fund.

MR. WEINMANN: In the arbitration.

JUDGE LIPTON: The health and welfare fund?

MR. WEINMANN: Insurance fund and pension fund.

JUDGE LIPTON: Mr. McCulloch, about how long do you think you will take to put in the General Counsel's case in chief?

MR. MC CULLOCH: I would imagine, your Honor, it would probably take about an hour, anticipating cross examination of the witnesses, I will be putting on the stand.

JUDGE LIPTON: How many witnesses do you have?

MR. MC CULLOCH: I am anticipating three, your Honor.

JUDGE LIPTON: And what is your estimate, just for duidance purposes, of how long the entire case would take?

MR. MC CULLOCH: On the assurance from counsel for the respondent that he was going to call one witness for his case, I would imagine we'd be done by the middle of the afternoon, if not earlier.

JUDGE LIPTON: What is your opinion on this, Mr. Turchin, just for guidance purposes?

MR. TURCHIN: I would think it would take no longer than two hours. It is a very simple issue.

JUDGE LIPTON: For the entire case.

MR. TURCHIN: No question in my mind.

MR. MC CULLOCH: Your Honor, might I point out something that has occurred to me prior to this trial?

During the investigation of this case, which was placed into my hands for investigation, counsel for

respondent did raise the issue of how many people were in the unit and how many people were excluded from the unit.

MR. TURCHIN: Can we just go off the record because there is a stipulation we have agreed to and I want to be sure we are not being prejudiced of that.

JUDGE LIPTON: Off the record.

(Discussion off the record)

JUDGE LIPTON: Back on the record.

MR. MC CULLOCH: At this time, Mr. Turchin, would read the stipulation on the matters about which I was about to speak.

MR. TURCHIN: It is hereby stipulated by and between the attorneys for the respondent and General Counsel that the employer at the time of the receipt of the charge, offered to open his books and records to the union and to Mr. McCulloch, the attorney for the NLRB, handling this matter, offered to allow Mr. McCulloch to question the employees to determine their job classification and offered to abide by the determination of Mr. McCulloch as to the job classification and unit the employees should be part of.

This offer was declined by Mr. McCulloch and the General Counsel. Would you so stipulate, Mr. McCulloch?

MR. MC CULLOCH: I would stipulate to that, but I trust

that I --

JUDGE LIPTON: That stipulating is admitted. What else do you have?

Do you want to add anything to it?

MR. MC CULLOCH: Perhaps to qualify my refusal. Upon being made such an offer, I conferred with Regional supervisory personnel and it was agreed in the Region that should I undertake such an investigation, I would variably take the position of a representation case Hearing Officer and of the Regional Director in accepting this evidence from the employees and from the respondent, mulling it through my mind and reaching a conclusion which would then become accepted by the respondent as to who was in the unit and who was not.

It was decided that the investigator in the C.A. case was not the proper party to do this. I conveyed this, I reconveyed this information to Mr. Turchin, I think I suggested to him arbitration might be a proper forum for this, and he rejected that as he has already said.

My recollection is that he suggested that should this case come to trial, it would probably be the position of the administrative law judge to see who should be in the unit. I would point out, your Honor, that I have subpoenaed employee records in an effort that today, if this is the only issue we'd have to go into, perhaps we could go right to it and find out who the employer believes is in the unit and

case. There was a period of off the record discussions in an attempt to resolve certain issues and possible settlement, without success.

Mr. McCulloch, at this time, are you ready to go forward with your evidence?

MR. MC CULLOCH: I am, your Honor, but before I call my first witness, I'd like to have marked for identification and offer into evidence, copies of the settlement agreement in case number 2-CA-13540, which settlement agreement was described in paragraph 8 of the complaint.

JUDGE LIPTON: That is General Counsel's 2-A and 2-B.

(Documents marked General Counsel Exhibits No. 2-A and No. 2-B for Identification, this date.)

JUDGE LIPTON: Is there any objection to this?

MR. MC CULLOCH: I will note, your Honor, that there was a notice to employees that was also printed in Spanish, which I have excluded from the agreement. It reads identically to the English verson.

JUDGE LIPTON: You have here two documents?

MR. MC CULLOCH: Two documents. One is a settlement agreement and one is the notice --

JUDGE LIPTON: One is marked 2-A; one is marked 2-B.

MR. TURCHIN: I object to this as being immaterial in that there was an admission in the pleadings that fully covers the situation and the situation and the issue is set

forth in the complaint in paragraph 7 --

JUDGE LIPTON: I understand that, objection is overruled. There can't be any dispute about these documents and I specifically wanted to see them myself.

What lies behind the complaint. They're admitted.

(General Counsel Exhibits No. 2-A and No. 2-B for Identification received in Evidence, this date.)

MR. MC CULLOCH: General Counsel calls as its first witness, Mike Fleicher.

MICHAEL FLEICHER,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. McCulloch) Would you state your name and spell it for the record.

A Michael Fleicher, F-l-e-i-c-h-e-r.

Q What is your occupation, Mr. Fleicher?

A Business agent, Local 1034, International Brotherhood of Teamsters.

Q Have you ever had any contact with the Ortiz Funeral Home?

A Yes.

Q When did that first occur?

A With the funeral home itself or the employees? The

Q What month was this in?

A January, February, March.

MR. TURCHIN: Note my objection. The complaint does not cover any periods prior to March 1975, sir.

JUDGE LIPTON: All right, you have a continuing objection, Mr. Turchin on this line. There has been a ruli already made, you don't have to persist in it.

MR. TURCHIN: Thank you.

Q Mr. Fleicher, what year was this now?

A '75.

JUDGE LIPTON: I really do want to move along. This is just background. Let's not get into every little nuance.

Q Were you involved in the settlement agreement of 1975?

A Yes.

Q Subequent to that settlement agreement, did you participate in any negotiation between Local 1034 and Ortiz Funderal Home?

A Yes, sir.

Q How many times did you meet?

A I would say roughly three or four.

Q When did these meetings occur?

A In the daytime in our office.

Q What month?

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A It would be late March, early April.

Q Who attended those meetings?

A I did, Domingo Varges, Pedro Serrano, Marty Adelstein, Michael Ortiz and occasionally Bernard Adelstein.

JUDGE LIPTON: Just a moment. You have to identify which side they're on. Serrano, Adelstein and Varges were employee representatives?

THE WITNESS: No, Serrano and Varges were. Bernard Adelstein, Martin Adelstein and myself were --

JUDGE LIPTON: Who was for the company?

THE WITNESS: Michael Ortiz.

Q Did anyone else from the company ever attend those meetings?

A No.

Q Could you tell us what happened at thos meetings?

JUDGE LIPTON: Take one at a time.

Q Take the first one that you can remember.

A Yes, a set of demands was given to Mr. Ortiz. He took the demands and said he would review them and set another date with us to come back and negotiate and that is what happened.

Q What happened at your next meeting?

A He came back asking -- he had written out some questions on things in the demands that he would want explanations on.

Q Did the union provide him with explanations?

A Yes, on everything.

Q This was Mr. Ortiz?

A Correct.

Q Can you remember specific topics of discussion?

A Yes, I can remember one discussion that he has on what the retroactive date would be as far as monies were concerned, as far as for the people. And a date that was agreed on was 3/22.

Q March 22nd?

A March 22.

And I can remember I even had said that was for everything. When I said retroactive, I meant for the funds, as well as --

MR. TURCHIN: Objection.

JUDGE LIPTON: Sustained.

Just relate what you said. What did you say to Mr. Ortiz concerning what would be covered within the retroactive period.

A I had asked for retroactivity from March 22nd on insurance, severance and back pay.

Q What was his position?

A His position, he was against it.

Q Did he state an alternative?

A He was asking for no retroactivity. Just from the time

of the contract agreement. From that point on. A compromise was made by the union that the funds would be effective May 1st and that the only thing that would be retroactive would be the pay.

Q Did Mr. Ortiz agree to that?

A Yes, sir.

Q Now, you have testified that you had three or four meetings. The third meeting, fourth meeting, what was the general topic of discussion?

A Well, the only thing I can remember, really, is that, you know, when all the points of the contract were agreed on, we shook hands and Mr. Ortiz at that time said that he was going to sign the contract, we thought he was going to sign it in the office --

JUDGE LIPTON: Never mind what you thought.

A At that time Mr. Ortiz said he would have to take back the contract in respect to his father and show his father just what it is all about. Just, you know, just out of respect to telling him and that was the last negotiation with Mr. Ortiz.

Q When was that meeting?

A The latter part of April.

Q Mr. Fleicher, I show you a document that has been marked for identification as General Counsel No. 3. Would you look through that document? (Handing)

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JUDGE LIPTON: Well, I had the first, what is it?

A It is Local 1034's contract with the Ortiz Funeral Home covering --

MR. TURCHIN: Objection.

JUDGE LIPTON: We are trying to get identification, Mr. Turchin. It is not an actual signed contract, is it?

THE WITNESS: There is no signature on the back.

JUDGE LIPTON: Well, you know there was no signed contract, don't you?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Who prepared that document, do you recognize it?

THE WITNESS: Yes, one of the girls in our office.

JUDGE LIPTON: Well, the union had it prepared?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Is that what you are testifying?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Do you recognize it?

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right, the union had it prepared at what point in time, as of what date, if you recall?

THE WITNESS: As of what date? No, I would only know it would be -- well --

JUDGE LIPTON: Let us be off the record a minute.

(Discussion off the record)

JUDGE LIPTON: Back on the record. Does the document now reflect a date?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: All right, is it stipulated that General Counsel's No. 3 marked for Identification is the document which this witness referred to as having been presented to Mr. Ortiz on April 28th, exclusive of any date appearing thereon.

MR. TURCHIN: Yes, sir.

MR. MC CULLOCH: Your Honor, it was actually presented to Mr. Ortiz after --

MR. TURCHIN: Objection, your Honor.

MR. MC CULLOCH: I have not agreed to the stipulation, Mr. Turchin.

MR. TURCHIN: I just object to your making statements as to facts.

JUDGE LIPTON: Counsel's statements do not constitute evidence. Then I misunderstood this. Perhaps I shouldn't have interjected here, but I thought I understood your method of proceeding here.

I don't want you to prompt this witness.To the extent that it has been indicated here, agreed to by Mr. Turchin, that this is the document referred to in the witness' testimony, is there any dispute about that fact?

MR. MC CULLOCH: There is no dispute. My only dispute --

JUDGE LIPTON: No, let us take one fact at a time.

MR. MC CULLOCH: There is no dispute it was the document referred to in the testimony.

JUDGE LIPTON: Now, I will admit that document just for the limited purposes, so far as indicated by this witness' testimony, that this is the document that he showed to Mr. Ortiz.

Now, you can fill in, to the extent that you are able to, whatever else you deem necessary concerning this document.

It is admitted for the specific purpose already indicated in the record.

(General Counsel Exhibit No. 3 for Identification, received in Evidence, this date.)

Q Mr. Fleicher, did you take the document which is marked General Counsel's No. 3, did you give that document to Mr. Ortiz?

MR. TURCHIN: Objection, your Honor.

I haven't objected, but I think we are going into areas which are clearly leading.

JUDGE LIPTON: Yes. The record already reflects that this is the document that was given to Mr. Ortiz and he is asking the witness the same thing.

MR. TURCHIN: That is the basis of my objection. I

think he is leading the witness into a certain area.

JUDGE LIPTON: Let us not get bogged down with technicalities. Put your next question directly.

Let the witness testify about it. If it refers to the document, you can ask him simply what happened.

Q During your discussions with Mr. Ortiz on April -- at the last meeting you testified to some time in the end of April, did there come a time that a document was given to him by any union official?

A Yes.

Q Who gave it to him?

MR. TURCHIN: Objection.

JUDGE LIPTON: Overruled.

Q Who gave it to him?

JUDGE LIPTON: You have to lay a proper background here and that will be filled in. Who gave it to him and when and what document?

Q Who gave it to him?

MR. TURCHIN: Objection. There has been no foundation.

JUDGE LIPTON: We are going to establish afoundation, otherwise this is preliminary.

Now, we just can't have these little technical objections. Of course, you have a right to make objections, but you have to use your judgment as to what is going to come in.

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There was a document that was given to Mr. Ortiz. Not by you, is that correct?

THE WITNESS: I gave him one set, sir.

JUDGE LIPTON: Now, there is another question about another document. Are you referring to another document, Counselor?

Q Was the document you gave him, the document that is marked General Counsel's No. 3?

A Yes, I gave him these contracts.

JUDGE LIPTON: I thought we already got past that whole point.

MR. MC CULLOCH: All right, your Honor, we will move along.

JUDGE LIPTON: Now this is the document --

THE WITNESS: Yes, sir.

JUDGE LIPTON: (Continuing) on April 28th which you referred to in your testimony, that you gave to Mr. Ortiz and that he was going to take it to his father or show to his father?

THE WITNESS: Your Honor, I said to you one set. The set that we originally gave Mr. Ortiz, he claimed a week or two later that he lost it and I brought him another set.

JUDGE LITPON: That is not the question. The question is, to begin with, is this the document referred to in

your testimony as having been given to Mr. Ortiz by you on April 28th?

THE WITNESS: Yes, sir. I don't know the date. I don't know if it is April 28th. I know it was the end of the month, but I don't know the exact date.

JUDGE LIPTON: All right, you referred to a meeting with Mr. Ortiz on whatever date that it happened.

THE WITNESS: Yes.

JUDGE LIPTON: And on this date you gave Mr. Ortiz a document?

THE WITNESS: Yes, sir.

JUDGE LIPTON: And General Counsel's No. 3, is that the document or not?

THE WITNESS: Yes, sir.

JUDGE LIPTON: That is the document.

THE WITNESS: Yes, sir.

JUDGE LIPTON: Whatever date you gave it to him?

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right, go ahead.

Q After the month of April, did you have any other meetings with Mr. Ortiz?

A Yes.

Q Where did that meeting take place, or meetings, where did they take place?

A In his main office on Southern Boulevard.

Q How many times did you meet him?

A I think twice.

Q Now your first meeting, what did you discuss?

A On the first meeting I brought him a set of contracts because he had told me his car was stolen or something and he lost the contracts that were originally in his car.

I brought him another set of these contracts.

Q When did this meeting occur?

A Within the first two weeks of May.

Q Did you speak to only Mr. Ortiz?

A No, I saw Edna, I saw the girl there that I had originally met.

JUDGE LIPTON: Was she in the meeting?

THE WITNESS: No, he took me in to --

JUDGE LIPTON: Well, confine it to the meeting when you discussed matters pertaining to bargaining.

Q What did he say to you about the contract?

A That he was going to show it to his father and return it to us signed.

Q And what did you say to him?

A I said we are waiting, Mike. He said all right, as soon as I show it to my father, no problem, you will have the contract back.

JUDGE LIPTON: I am trying to get this clear.

This is a meeting?

THE WITNESS: Yes.

JUDGE LIPTON: In May?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Within the first two weeks, the first of two meetings?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Go ahead.

Q Mr. Fleicher, the second meeting, approximately when did that occur?

A About the third week in May.

Q And where was that?

A Again on Southern Boulevard.

Q Who was present at the meeting?

A Mr. Ortiz and myself.

Q And what did you talk about?

A He called me to tell me that he was discharging one of his people. He showed me -- I think it was a wine bottle, either a wine or liquor bottle. That he had caught one of the fellows in his New York Chapel -- he came to the chapel and caught the fellow drinking there with people in the chapel and he terminated him for this and showed me the proof.

Q What did you say?

A I said if you caught him drinking -- I spoke to the man before I went over there and the man admitted to

drinking and he said I got caught and he was leaving.

JUDGE LIPTON: Why is this relevant?

MR. MC CULLOCH: Well, I was going to ask what else was discussed.

JUDGE LIPTON: Well, if it is not relevant, you can exclude the whole thing.

Q It is relevant that the witness has been bargaining with the employer --

JUDGE LIPTON: That is already in the settlement agreement.

MR. MC CULLOCH: But the employer was --

JUDGE LIPTON: All right, you are getting into peripheral matters, Mr. McCulloch.

Q Did you talk about the contract at that meeting?

MR. TURCHIN: Objection, it is leading and I am asking that you strike testimony with reference to anything that is leading.

JUDGE LIPTON: Overruled.

A Yes, sir.

Q What did Mr. Ortiz say?

A He told me that he was just waiting on his father to come back.

JUDGE LIPTON: What was the discussion? You said something to him and he answered you. What did you say to him?

THE WITNESS: You are talking about the discharge case, sir?

JUDGE LIPTON: No.

THE WITNESS: Just about the contract?

JUDGE LIPTON: Yes.

THE WITNESS: I asked him about the contract, I told him we needed it because in order to accept the fund, we had to have the contract. He said no problem, as soon as my father comes back. I just have to show him the contract out of respect and I will be in touch with Mr. Adelstein and I will have the contract in the office, no problem.

JUDGE LIPTON: What else was said, if anything, about the contract?

THE WITNESS: He told me he was kind of busy and he couldn't discuss too many things with me.

JUDGE LIPTON: Go ahead, Mr. McCulloch.

Q Did Mr. Ortiz at that meeting raise any problems about the contract?

A No, not at all.

Q Did you have any other meetings with him about the contract, after that one?

A No, I didn't have any more meetings with Mr. Ortiz.

MR. MC CULLOCH: I have no further questions of this witness at this time, your Honor.

JUDGE LIPTON: Mr. Turchin.

CROSS EXAMINATION

Q (By Mr. Turchin) Did you ever attend a meeting with Mr. Ortiz at the union, after May, 1975?

A Not that I recall.

Q Was there a meeting with Mr. Ortiz at the union in June 1975?

A I wouldn't know.

Q You never discussed it with anybody?

A No, not that I --

Q Who is Mr. Bernard Adelstein?

A He is the president of the local.

Q Did Mr. Adelstein discuss a meeting that took place with Mr. Ortiz and Mr. Adelstein in June, with you?

A No.

Q This is the first you have heard of that meeting?

A If there was such a meeting.

Q Was there a meeting in July of 1975 that you remember, at the union?

A Not that I know of.

Q Weren't you present at the meeting in July with Mr. Weinmann and the three Adelsteins and Mr. Ortiz and yourself?

A No.

Q Now, you were familiar with the operation of the Ortiz Funeral Home, weren't you?

A Yes.

Q And was Mr. Ortiz' father an employee and working for the Ortiz Funeral Home?

A I don't know.

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testified.

JUDGE LIPTON: What he testified is already in the record. You can ask him again what did Mr. Ortiz tell you concerning his father.

Q Did Mr. Ortiz tell you that the reason he could not sign the contract was that his father was out of town and when his father returned, out of courtesy to his father, he would show it to him and if his father agreed to it, he would sign it?

A No, sir.

Q Did Mr. Ortiz tell you his father was out of town?

A Not until May, till I went to his funeral home. Not when he left the office.

Q When in May did Mr. Ortiz tell you his father was out of town?

A I think it was the second week of May that I went to his office when I asked him for the contract.

Q And that is the first time that he told you that he would have to show it to his father?

A No. He told me that in the union office, when he was leaving the union office.

Q Now, when you went to Mr. Ortiz' office, Mr. Michael Ortiz' office and he told you that his father was out of town, did you ask him when his father was returning?

A Yes, I think so.

Q What did he tell you?

A He might have said a week or two. I really don't remember exactly.

JUDGE LIPTON: Don't speculate what he might have told you, just testify to what you remember. If you don't remember, so testify.

THE WITNESS: I don't remember, sir.

Q Did you tell any of your employees who you represented that the reason the contract wasn't being signed was that Mr. Ortiz' father was out of town?

A I don't remember.

Q Did you ever find out whether or not Mr. Ortiz' father was out of town on vacation?

A No. I had no reason to disbelieve him.

JUDGE LIPTON: Just answer the question, Mr. Witness.

THE WITNESS: No.

JUDGE LIPTON: The answer is no, you never found out.

THE WITNESS: No.

Q Now, thereafter, did you talk to anybody in the union concerning the fact that Ortiz had not signed the contract after he had told you he would sign the contract in May?

JUDGE LIPTON: I don't know what the relevance of this is. Do you have the evidence that he talked to somebody in the union or is this just exploratory?

MR. TURCHIN: The relevance, your Honor --

JUDGE LIPTON: You are talking about internal matters within the union.

MR. TURCHIN: The relevance, your Honor, is that the witness testified that he was unaware of meetings in --

JUDGE LIPTON: He has already answered that.

MR. TURCHIN: In July, that is what I understand.

Now, I am trying to refresh his recollection to see whether or not I can help him remember those meetings.

JUDGE LIPTON: I think this matter has been pretty well covered already and now you are coming in through another direction.

Did anybody, and the question was previously asked, did anybody within the union tell you, did it come to your attention in any way that there were meetings with the union and the company during June and July?

THE WITNESS: No, your Honor.

Q Did anybody in the union ask you why the contract wasn't signed?

JUDGE LIPTON: I am going to sustain an objection on that.

MR. TURCHIN: There is no objection on that.

JUDGE LIPTON: I am sustaining my own objection.

MR. TURCHIN: I am sorry, your Honor.

JUDGE LIPTON: It is a simple matter. If you have that evidence, you put it in through your own witnesses.

You are pursuing this line consistantly and it's been covered quite amicably.

MR. TURCHIN: I don't want to argue, but in cross examination if I am not given an opportunity to show that the witness is not testifying fully and that there is a question of credibility, I can only bring it out, sir, by questions other than direct questions.

JUDGE LIPTON: Well, now Mr. Turchin --

MR. TURCHIN: If you don't give me an opportunity, I don't see how I can do it.

JUDGE LIPTON: You have gone beyond --

Q Did you have any conversation in May with anyone in the union?

A Yes.

Q With whom?

A Mr. Bernard Adelstein told me to bring two more contracts down to Mr. Ortiz, that his were lost.

Q Did you have any conversations in June with anyone in the union?

A With reference to this?

Q Yes.

A No.

Q In July?

A No.

Q Did you have a conversation with your attorney concerning

the testimony here today?

JUDGE LIPTON: Mr. Turchin, we have spent a lot of time and I have given you a lot of latitude in every possible direction.

Your own estimate was this whole case would take twohours. You are persisting in very, very minor and picayune matters and now you are getting into conversations between this witness and his attorney and I would assume that you are saying that you are attesting credibility.

You are pursuing the same line upon which I have indicated already the point has been exhausted.

I don't know where you are going.

MR. TURCHIN: I have no further questions.

MR. MC CULLOCH: I have one question, your Honor.

JUDGE LIPTON: Well, I have a question or two. Let me interject here with this question. I want to understand the meaning of General Counsel's No. 3. This was prepared by the union.

THE WITNESS: Yes, sir.

JUDGE LIPTON: On what basis was it prepared by the union?

THE WITNESS: After negotiations, this was the final agreement of the contract.

JUDGE LIPTON: Did you have a proceeding form, a working form?

THE WITNESS: Yes, your Honor.

JUDGE LIPTON: Was it antedated?

THE WITNESS: Yes, Your Honor.

JUDGE LIPTON: Mr. McCulloch, is this going to come into another witness?

MR. MC CULLOCH: General Counsel is intending to offer the proposed collective bargaining agreement that was antedated by the witness through whom it will come.

JUDGE LIPTON: This is another witness.

MR. MC CULLOCH: Yes, sir.

JUDGE LIPTON: This witness' testimony, as I understand it, is this was the document that was prepared.

THE WITNESS: The final document.

JUDGE LIPTON: For the purpose of the final contract to be admitted for signature.

THE WITNESS: Yes, sir.

JUDGE LIPTON: And you have already testified that two times you submitted copies to Mr. Ortiz.

THE WITNESS: Yes, sir.

JUDGE LIPTON: You replaced copies which he said to you were lost?

THE WITNESS: Stolen, right.

JUDGE LIPTON: And in both instances, these copies you gave to the company were facsimilies or the same substance as this document admitted in evidence as General

Counsel's No. 3.

THE WITNESS: Yes, your Honor.

JUDGE LIPTON: One more question. The last conversation that you had with Mr. Ortiz was when he told you again that he wanted to show this document to his father.

THE WITNESS: Yes.

JUDGE LIPTON: You didn't attempt to request any further meeting after that?

THE WITNESS: No.

JUDGE LIPTON: And did the company call you and attempt to arrange a further meeting?

THE WITNESS: No, sir.

JUDGE LIPTON: And this was the last thing that happened?

THE WITNESS: Yes, your Honor.

JUDGE LIPTON: All right, Mr. McCulloch.

REDIRECT EXAMINATION

Q (By Mr. McCulloch) Mr. Fleicher, during the contract negotiations in March and April or in April of 1975, did Michael Ortiz at any time tellthe union or deny to union representatives --

JUDGE LIPTON: In this witness' presence?

Q In this witness' presence during any of the meetings that he did not have authority to make a binding agreement?

A No, he even said that he did.

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JUDGE LIPTON: What meeting was this?

THE WITNESS: The first one because before we even start negotiating we aer not going to negotiate with somebody who doesn't have the authority.

MR. TURCHIN: Your Honor, please.

JUDGE LIPTON: That may be stricken.

THE WITNESS: We asked, your Honor.

JUDGE LIPTON: And you recall this was discussed?

THE WITNESS: Yes, sir.

JUDGE LIPTON: And you recall Mr. Ortiz said something about authority?

THE WITNESS: Yes.

JUDGE LIPTON: What did he say?

THE WITNESS: I said he is in charge of the whole Ortiz concern.

JUDGE LIPTON: Did he say anything about his father?

THE WITNESS: At that point? The only time he said anything about his father was that in respect to his father, he was going to show it to his father.

JUDGE LIPTON: That was the only reference to his father?

THE WITNESS: Yes.

JUDGE LIPTON: This was Michael Ortiz?

THE WITNESS: Correct.

JUDGE LIPTON: And his father's name is what?

THE WITNESS: I think it is Ralph Ortiz.

JUDGE LIPTON: Mr. Turchin, can we clarify the record on this? Is it Ralph?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: Go ahead.

MR. MC CULLOCH: No further questions, your Honor.

JUDGE LIPTON: Anything further?

RECROSS EXAMINATION

Q (By Mr. Turchin) When you gave the agreement to Mr. Ortiz, did you tell him there was information that had to be filled in?

A I told him it had to be signed.

Q Nothing else?

A That is all.

Q Did you refer him to Schedule B, Appendix B?

A No, sir.

Q What was it there for?

A I can tell you how Appendix B got there. This contract was copied out of another agreement with another funeral home called Ponce and they had an appendix with different wage schedules. They had a girl in the back that does the typing and when she did the last part, which is similar in certain places to Ponce, she just typed this in on her own, this last page, this appendix B.

JUDGE LIPTON: Are you testifying this is not advertently

part of the agreement that you submitted?

THE WITNESS: No, your Honor.

Q Wasn't there a reason for that appendix being in this contract?

A No, sir.

Q Weren't there some employees who were not covered, working for Ortiz?

A You are talking about chauffeurs and embalmers?

Q I am talking about some employees who are not covered.

A Yes, there was chauffeurs and embalmers that wasn't covered.

Q Nobody else?

JUDGE LIPTON: Now, we are getting into the legal questions of matters of interpretation.

Q Let me understand. Didn't you sign the settlement agreement with Mr. Ortiz as to who would be covered and what unit was to be covered?

A Yes.

Q And didn't you know who was covered and who was not covered?

A Attendants, floor people, receptionists, interpreters and porters are covered by this agreement.

Q Who is not covered?

MR. MC CULLOCH: Your Honor, this is in evidence already.

going to persist, go ahead and see if you can identify it, but I think at this point I think you are wasting time.

Go ahead, try to identify it.

Q Do you recognize this contract with Ponce?

JUDGE LIPTON: Have it marked.

MR. TURCHIN: I am going to do that, sir.

JUDGE LIPTON: All right, mark it Respondent's No. 1 for Identification.

(Respondent's Exhibit No. 1 for Identification marked this date.)

JUDGE LIPTON: I want you to look through it quickly and see if you can identify it. One way or the other. Do you know what is is or you don't?

THE WITNESS: It looks like --

JUDGE LIPTON: Not what you are reading, have you ever seen it before?

THE WITNESS: Have I ever seen the Ponce contract?

JUDGE LIPTON: Yes, sir.

THE WITNESS: Yes, sir.

JUDGE LIPTON: Is this the Ponce contract?

THE WITNESS: I can tell you right now this is not our paper or our contract. We don't use like this. This is our paper. So I don't know.

Q Other than the paper, Mr. Witness, I am asking you whether the contents, in other words, whether that photostat

(Short recess called)

AFTER RECESS

JUDGE LIPTON: Back on the record.

MR. MC CULLOCH: Your Honor, General Counsel now calls Domingo Varges to the stand.

DOMINGO VARGES

called as a witness, having been first duly sworn, testified as follows:

JUDGE LIPTON: How do you spell your first name?

THE WITNESS: D-o-m-i-n-g-o.

DIRECT EXAMINATION

Q (By Mr. McCulloch) Mr. Varges, have you ever worked for --

JUDGE LIPTON: Have him state his full name and address.

Q Mr. Varges, will you please state your full name and address, spelling your last n-me?

A Domingo Varges, I live at 1360 University Avenue, Bronx, New York.

Q Mr. Varges, have you ever worked for the Ortiz Funeral Home?

A Yes, sir.

Q Mr. Varges, did you ever participate in negotiation meetings between Ortiz Funeral Home and Local 1034?

A Yes, I did, sir.

Q When did those meetings occur?

A I recall a meeting of early April, I believe it was the 4th. At that time we came to an agreement as to our schedule.

MR. TURCHIN: Objection.

JUDGE LIPTON: Before we get into that, about coming to any agreement, who was there and lay the proper foundation and have him testify in terms, as nearly as possible, of what was said by whom.

Q Mr. Varges, where was this meeting held?

A The meeting of the 4th was at the union offices, 221 Park Avenue South.

Q Who attended that meeting?

A Myself, Mr. Ortiz, Michael Ortiz, Mr. Weinmann and I believe there were maybe eight or nine of my fellow employees. Mr. Mike Fleicher. They were all there.

Q Now, what did you talk about at that meeting?

A At that meeting there was a disagreement as to where we were going to work, what chapel, what locations and the hours and we finally came to an agreement as to that, to the hours and the times and the chapels that we were going to work at.

Q What was your particular assignment?

A I was assigned to Havemeyer from 4:30 to 12.

Q Where is Havemeyer located?

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JUDGE LIPTON: And are you testifying you do not recall whether Mr. Ortiz was present or not?

THE WITNESS: I don't recall if he was present when I was told that negotiations would start soon.

JUDGE LIPTON: All right, go ahead.

Q Did you ever meet with Mr. Ortiz and union representatives again after April 4th?

A Yes, we did. We met on Thursday April the 10th at the union offices.

Q Do you remember about what time of day that was?

A It was in the afternoon. I would say after two o'clock.

Q Who was present at that meeting?

A That meeting, myself, Mr. Serrano, a fellow employee, Mr. Michael Ortiz, Mr. Martin Adelstein, Mr. Weinmann and Mike Fleicher.

Q Now, what happened at this meeting?

A We were given copies of the contract and we proceeded to negotiate it.

MR. MC CULLOCH: I'd like this marked for identification as General Counsel's Exhibit No. 4. Mr. Varges, could you please identify this document?

THE WITNESS: It is a proposed collective bargaining agreement between Ortiz Funeral Home Corporation and Local 1034, International Brotherhood of Teamsters, covering interpreters, receptionists maintenance employees --

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JUDGE LIPTON: You don't have to read from it, you were just asked to identify it. Do you recognize it?

THE WITNESS: Yes.

JUDGE LIPTON: What is it, it is a proposed contract?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Was this the contract that you said was presented at the April 10th meeting for the purposes of negotiation?

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right.

(General Counsel Exhibit No. 4 marked for Identification, this date.)

Q Mr. Varges, I ask you to look through the document marked for identification as General Counsel Exhibit No. 4. There are markings on some of the pages in handwriting.

Do you recognize the handwriting and the markings?

A Yes, sir, it is my handwriting and my markings.

MR. MC CULLOCH: I offer this document into evidence as General Counsel Exhibit No. 4.

JUDGE LIPTON: It is offered and admitted for the purpose of indicating and identifying the document the witness referred to as having been presented at the meeting on April the 10th for the purpose of negotiation and upon which certain negotiations were conducted.

MR. TURCHIN: I have no objection.

JUDGE LIPTON: All right, it is received for that purpose.

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(General Counsel Exhibit No. 4 for Identification, received in Evidence, this date.)

JUDGE LIPTON: Go ahead.

Q Mr. Varges, at that first meeting on April 10th, what was discussed?

A We went through, I don't recall how many provisions, but we discussed some of the provisions in the contract.

Q By "we", who was discussing them?

A Well, the union firms and Mr. Ortiz.

Q And what kind of discussion was it?

A Well, wording in the contract and additions and omissions, things of that nature.

Q Can you recall any specific discussions?

A Yes, I recall here in the first provision, recognition. Mr. Ortiz wanted it to read as the NLRB decision.

JUDGE LIPTON: Let us try to do this systematically. I don't know what your entire purpose is, Mr. McCulloch. Perhaps if you go down the line as to each provision, if this is your purpose and indicatewhat was discussed and whether or not an agreement was reached and how. Go ahead.

Q All right. Mr. Varges, looking at the first clause, recognition, did Mr. Ortiz agree to the proposed recognition clause as it appears there?

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A As it appears here? No, like I said, he wanted it to read as the NLRB decision, the way it was written there.

JUDGE LIPTON: Was that agreed by the union?

THE WITNESS: I believe so, sir. I don't know as to the final contract, whether the wording was changed or what.

JUDGE LIPTON: We are not talking about any final contract. We are talking about what happened at the meeting.

THE WITNESS: Yes, sir, they agreed to change the wording.

JUDGE LIPTON: The union agreed to that.

THE WITNESS: Yes, sir.

JUDGE LIPTON: Go on, Mr. McCulloch.

Q The second provision is entitled union security. Do you remember if that was discussed?

A It was discussed but I don't remember any specifics.

Q Section 3 on checkoff, do you remember any discussion on that?

A I recall only that the union was going to deduct $12 monthly for our dues and an initiation fee of $100. That is what I recall about the checkoff.

Q Number 4 is entitled work week, hours of work. Do you remember what was discussed on that provision?

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JUDGE LIPTON: Back on the record. Mr. Turchin?

MR. TURCHIN: The employer is prepared to stipulate that the matters in dispute with reference to General Counsel Exhibit No. 3, tnat is the final proposed contract, extra pay for group leaders, severance, holidays and rules and regulations. The major issue was the issue of who was included in the unit as set forth in Appendix B of General Counsel's Exhibit No. 3.

JUDGE LIPTON: All right, let's see what we got here. Severance pay, holidays, rules and regulations and what else?

MR. TURCHIN: Extra pay for group leaders.

JUDGE LIPTON: Extra pay for group leaders?

MR. TURCHIN: Yes.

JUDGE LIPTON: Is it so stipulated?

MR. MC CULLOCH: To the extent --

JUDGE LIPTON: To the extent this is the agreement.

MR. MC CULLOCH: To the extent that the employer says he did not agree to these items, I will stipulate that that is what he is saying now.

JUDGE LIPTON: Well, now, what is essential here is the elimination of what is in agreement. As to all other matters, the respondent is in agreement pertaining to General Counsel's No. 3, is that correct, Mr. Turchin?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: And that is what you are asked to stipulate?

MR. MC CULLOCH: So stipulated.

JUDGE LIPTON: That stipulation is admitted. Now, you don't have to cover the other matters and we have these four items which were enumerated, which the company disputes. These four matters are reflected in General Counsel's No. 3, I would assume.

MR. MC CULLOCH: All except rules and regulations, your Honor.

JUDGE LIPTON: Well, the document is in and we'll see where we go from there and you needn't develop matters that are in agreement.

You can persue the other matters.

Q Mr. Varges, can you turn to Page 9 of General Counsel's Exhibit No. 4?

(Witness complies)

MR. MC CULLOCH: I am in error because I am using General Counsel's No. 3.

JUDGE LIPTON: Here is 4.

(Handed)

Q Page 10, Mr. Varges.

(Witness complies)

Q I direct you to number 21, called the severance plan provision. Do you recall if this provision was discussed?

A It was discussed, yes, sir.

Q Do you remember what was said and by whom?

A No, I don't recall what was discussed as to this provision, except that it was going to be dated May 1, 1975, '76 and '77. I don't recall the specifics between the union officials and Mr. Ortiz.

JUDGE LIPTON: You will have to speak a little louder so everyone can hear you.

THE WITNESS: I said I don't recall the specifics of what was said between the union officials and Mr. Michael Ortiz.

Q All right, Mr. Varges, let us go back to Page 3, provision 14, title general leader. Do you remember what was discussed on this provision?

A Only that the general leader would be paid 25¢ extra, as it is stated here, an hour and that the general leader and the shop steward were one in the same.

Q What did Mr. Ortiz have to say about provision 14?

A I believe hw anted to know who the general leader was going to be or the shop steward, but I don't recall too much other than that.

JUDGE LIPTON: You don't recall what?

THE WITNESS: Too much concerning this provision.

Q Did he talk about money?

MR. TURCHIN: Objection, leading.

JUDGE LIPTON: Pardon?

MR. TURCHIN: Leading, sir.

JUDGE LIPTON: Overruled. It is obvious the

THE WITNESS: No, sir, I do not.

Q Mr. Varges, would you look at Page 5 of General Counsel's No. 4. I direct your attention to provision 8 on holidays. Do you recall what was discussed about that?

A Yes, Mr. Ortiz claimed that 15 holidays were too much. I recall also that he wanted the holidays named and --

Q Do you remember how many holidays he wanted?

A I believe he wanted 12.

Q What did the union say in response to that?

A I believe the union agreed to the 12.

Q Mr. Varges, look at Page 8.

(Witness complies)

Q Provision 15 on Bereavement. Was that paragraph discussed?

A Yes, it was, sir.

Q What was said about that?

A The union, I believe, offered three days for bereavement and I think Mr. Ortiz said three days was too much. I think eventually the three days bereavement was eliminated altogether and we got the three days into the holidays, I believe.

I don't recall. The union --

JUDGE LIPTON: You will have to speak louder, Mr. Witness. Make an effort to speak slowly and loudly.

A I recall that Mr. Ortiz said three days were too much

and that eventually this provision was stricken out and instead of the 12 holidays, we had 15 holidays, I guess, to make up for the days.

Q Do you remember Mr. Ortiz agreeing to that?

A Yes.

Q Mr. Varges, how many meetings did you attend where a contract was discussed?

A I attended the meeting of April 10th and there was a meeting in the latter part of April, another meeting. I attended that one also.

Q At both of these meetings, what was discussed? Things you were talking about.

A At both of these meetings, yes, the contract and its provisions.

Q The last meeting you attended, what happened at that meeting?

A The last meeting that I attended, it was my belief that --

MR. TURCHIN: Objection.

A We had come to an agreement --

JUDGE LIPTON: Just a moment. A couple of things here. Don't testify what you believe and what you think and what your opinions are. Testify to what happened and what was said. Number two, I suggest you have to use your judgment, Mr. Turchin and wait until the end of the

question because if you are wrong, we have to reconstruct the whole thing.

Let the witness finish his answer. Leave out I believe and just testify what was said and what was done.

A The last meeting we finished negotiating the contract and we came to an agreement on it. I recall that I was told by union officials that --

JUDGE LIPTON: Were you told at this meeting?

THE WITNESS: Yes.

JUDGE LIPTON: I am doing the same thing myself. You are relating everything, you say, that was taking place at this meeting.

THE WITNESS: Yes, sir.

JUDGE LIPTON: Go ahead.

A After the meeting or during the meeting, rather, I am sorry, there was agreement between Mr. Ortiz and the union concerning thdcontract and I was told that all that was left was for Mr. Ortiz to sign it and that was it.

Q Who told you that?

A The union official.

JUDGE LIPTON: In the presence of Mr. Ortiz?

THE WITNESS: I believe so, sir. I am not -- I can't recall exactly.

JUDGE LIPTON: Do you recall clearly whether this conversation took place outside of the meeting or inside

the meeting.

THE WITNESS: It was inside the meeting, sir. After negotiations had ceased. But we were all in agreement.

JUDGE LIPTON: All right, go ahead, Mr. McCulloch. You were asked to testify as to what took place at this meeting.

THE WITNESS: Yes.

JUDGE LIPTON: Do you recall anything said by Mr. Ortiz?

THE WITNESS: No, I do not.

Q During that last meeting, Mr. Varges, did Mr. Ortiz raise the question of who was covered by the contract?

A No, he did not.

Q Do you remember if he raised an argument about the holiday provision?

A After that last meeting? No, he did not.

Q Do you know if he raised an argument suggesting a change about the severance provision?

A No, he did not, sir.

Q Did he raise an argument or suggest a change concerning extra pay for group leaders at that last meeting?

A Is this after the meeting, sir?

Q No, at --

MR. TURCHIN: Objection.

JUDGE LIPTON: What is the objection?

MR. TURCHIN: The objection is that the witness is being led and the witness should be directed to testify as

to his best recollection without asking for directions from counsel.

JUDGE LIPTON: You mean on this last one?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: Well, it was classification. I will take this as illicit denials which have been indicated in the record are in dispute. They're negative in character and I will permit, that after full testimony, as to this meeting, such questions for the purposes already described as in issue. I will permit that. Was there any discussion at this last meeting concerning extra pay for group leaders and what is your answer?

THE WITNESS: Well, sir, if it was during negotiations, yes, there were discussions, but after the meeting, no.

JUDGE LIPTON: There were discussions during the meeting? During the discussions, during the meeting concerning extra pay for group leaders, what was said and by whom?

THE WITNESS: Well, sir, I can only recall Mr. Ortiz wanting to know who the general leader was and the 25¢. That is all I can recall.

JUDGE LIPTON: Was anything agreed upon?

THE WITNESS: I don't recall that, sir.

JUDGE LIPTON: At the time of that discussion.

THE WITNESS: No.

JUDGE LIPTON: All right, there came a time toward the close --

THE WITNESS: Yes.

JUDGE LIPTON: No, what is your testimony concerning negotiations?

THE WITNESS: At the close, sir, after the hearing?

JUDGE LIPTON: Yes.

THE WITNESS: There was agreement on all provisions-

JUDGE LIPTON: Now, at this point -- well, that speaks for itself. The only testimony or the only thing you recall concerning this subject of extra pay for group leaders was what you just indicated, that Mr. Ortiz wanted to know who the leader was and about the 25¢?

THE WITNESS: Yes.

JUDGE LIPTON: You don't recall what else was said?

THE WITNESS: I do not, sir.

JUDGE LIPTON: Go ahead.

Q Did Mr. Ortiz offer provisions for rules and regulations?

A Provisions for rules and regulations?

Q Yes.

A No, sir.

Q Did he make any suggestion of rules and regulations?

A He had a list of rules and regulations, he did, sir, yes.

Q Had you seen that list?

A I had seen a handwritten list, yes. I hasn't seen the list that Mr. Ortiz had made.

JUDGE LIPTON: Are you talking about this meeting?

Q This is still the last meeting, Mr. Varges?

A We are at the last meeting, yes, but the handwritten list I had seen, I didn't see it first at that meeting. I had seen it prior to that.

JUDGE LIPTON: You saw it at a prior meeting.

THE WITNESS: No, it was a fellow employee that gave me the handwritten list.

JUDGE LIPTON: Well, you don't know that Mr. Ortiz prepared this, except you saw it in the hands of a fellow employee.

THE WITNESS: He had a copy that was given to him and he had made a handwritten copy.

JUDGE LIPTON: You weren't there when it was given to him.

THE WITNESS: No, sir, I was not.

JUDGE LIPTON: The question is concerning rules and regulations. Was anything discussed at the last meeting?

THE WITNESS: I recall only that Mr. Ortiz said that he had rules and regulations.

JUDGE LIPTON: And at a prior meeting, was this discussed?

THE WITNESS: It was not, sir, no.

JUDGE LIPTON: This is all you recall.

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right, Mr. McCulloch.

Q Mr. Varges, do you remember what the union response was to Mr. Ortiz' rules and regulations at that last meeting?

A I believe the union asked Mr. Ortiz to provide them with a copy of the rules and regulations.

Q Is that the only response you remember?

MR. TURCHIN: Objection.

JUDGE LIPTON: I will overrule it.

Q What is your answer, Mr. Varges?

JUDGE LIPTON: The question is, in essence, whether anything else was said, that you recall, concerning rules and regulations.

A I don't understand the question, sir, I am sorry.

MR. MC CULLOCH: Your Honor, I will withdraw the question.

JUDGE LIPTON: All right, question is withdrawn.

MR. MC CULLOCH: No further questions, your Honor.

CROSS EXAMINATION

Q (By Mr. Turchin) At the meeting of April 10th, Mr. Weinmann was there; is that correct?

A I believe he was, sir.

Q How about the meeting of April 28th, the last meeting?

A I believe he was also, sir.

Q Do you remember why Mr. Ortiz objected to who was covered in the recognition?

A I do not, sir.

Q Well, Mr. Ortiz raised that issue when the first meeting took place?

A Right.

Q And he was raising the issue as to who was covered by the agreement; is that correct?

MR. MC CULLOCH: Objection.

MR. WEINMANN: Objection. That is not what his original testimony was. Counsel is reading something into it.

JUDGE LIPTON: Well, I think you are in fact discerning matters in your question which are not in evidence.

You can ask him to repeat what Mr. Ortiz said about the recognition agreement or the recognition clause at the first meeting.

Q Mr. Ortiz was concerned as to who was involved?

MR. WEINMANN: Objection.

Q In the -- what?

JUDGE LIPTON: Allow him to finish his question. Please finish your question.

MR. TURCHIN: I will withdraw the question.

Q Do you remember that Mr. Ortiz was concerned as to which of the employees were involved in this recognition?

MR. MC CULLOCH: Objection, your Honor.

JUDGE LIPTON: I am going to sustain the objection about "concerned," which is a mental attitude. What was said.

Q Mr. Ortiz raised the question as to who was to be covered, which employees were to be covered by the contract.

A Yes, he did, he wanted it to read as the NLRB decision.

Q And didn't Mr. Ortiz say anything further?

A I don't recall specifically, sir, no.

JUDGE LIPTON: Did Mr. Ortiz use the language, in any manner, concerning who was covered?

THE WITNESS: As I stated before, sir --

JUDGE LIPTON: You can state in positive terms what you recall was said.

THE WITNESS: Only that he wanted it to read, this provision, recognition, he wanted it to read as it was stated in the NLRB decision. That is what I can recall.

Q How long would you say this was discussed?

A I would be taking a guess, sir, I don't want to do that. I can't recall exactly how much time we spent on each provision.

Q But there was enough of a discussion for you to make some notes about it and you made the notes and put the notes on the proposed contract?

A Right.

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Q Did you understand what was meant by recognition?

A Recognition?

Q Yes.

JUDGE LIPTON: I don't know that I am going to be able to give any kind of weight to an answer of this type. Present recollection of understanding of a prior event concerning language which contains legal conclusions.

MR. WEINMANN: I think it is irrelevant and I object on that purpose.

MR. TURCHIN: I would indicate that the witness made notes and made notes with reference to that and he used those words.

JUDGE LIPTON: Well, you can ask him what was said. You can persue that at any length.

Q How long was this discussed?

A I told you, sir, I can't recall specifically how much time was spent on each provision.

Q But it was something that Mr. Ortiz was concerned about.

JUDGE LIPTON: We are getting into the same --

Q And raised at that particular --

JUDGE LIPTON: Now, Mr. Turchin, I have already indicated that the language concerned -- now, these are matters that you can argue about in your brief. Matters of inference, whether he was concerned or not, I will not permit the witness to testify on that type of conclusion,

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that he was concerned.

Q Do you remember Mr. Ortiz, where the holidays were concerned, bringing up the number 9?

A Number 9, sir?

Q Nine, 9 days.

A No, sir, I don't recall no number 9.

Q Do you recall any other number, other than 12 and 15?

A No, I do not, sir.

Q Do you remember what Mr. Weinmann said at these meetings?

A Do I remember what Mr. Weinmann said?

Q Weinmann, yes.

A Concerning what?

Q Recognition.

A No, I don't recall what he said specifically, no, sir.

Q Did he discuss it, that you remember?

A The recognition provision?

Q Yes.

A They did.

Q Was Mr. Weinmann, did he participate in that discussion?

A I believe he did, sir, yes.

Q Did Mr. Fleicher participate?

A Yes, sir, everyone that was at the m-eting, union officials, participated.

Q Did you participate in that discussion?

A I was more or less an observer, sir.

Q Do you remember what Mr. Fleicher said?

A I can't recall, sir, not specifically, no.

Q And you don't remember what Mr. Weinmann said, do you?

A Concerning recognition, the provision there?

Q Yes.

A I am sorry, I do not.

Q Was it your understanding that these negotiations were for the whole shop?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: I will sustain it.

A For the whole shop, sir?

JUDGE LIPTON: No, no, there is an objection sustained.

Q How many employees did you believe were being discussed with reference to this agreement?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: I will sustain it.

Q Did you have any conversation with any of the union people concerning which of the employees were involved in these negotiations?

A Which of the employees were involved?

JUDGE LIPTON: Is this in the course of one of the meetings?

Q The course of the meetings involved, the negotiations.

JUDGE LIPTON: During one of the meetings you attended the question is, did you have a conversation or was there any conversation concerning which employees were involved in the negoations. Do you understand the question?

THE WITNESS: I do not, sir.

Q Well, there were different categories of employees employed by Mr. Ortiz at Ortiz Funeral Home. Was there any conversation whether or not some of these employees were not covered by the negotiations?

A It might have been disucssed during the discussion of the first provision, recognition, as to who was covered by this agreement.

JUDGE LIPTON: Now, just a minute. You are to testify what you recall without speculating. It might have been. Do you recall any portion, any fragment or any general subject regarding this matter of which employees would be covered in the recognition clause?

THE WITNESS: I recall, sir, that there were discussions about classifications of employees in the recognition provision.

JUDGE LIPTON: And this took place at what meeting?

THE WITNESS: It was the first meeting.

JUDGE LIPTON: And do you recall what was said?

THE WITNESS: Not specifically, sir, no.

JUDGE LIPTON: Do you recall what was concluded, that the provision would read as the NLRB was written?

JUDGE LIPTON: All right, Mr. Turchin.

Q Do you recall whether any names of employees were discussed as to classifications?

A Names of employees? No, sir.

Q Did you ever see appendix B?

JUDGE LIPTON: You are showing him Respondents' No. 1?

MR. MC CULLOCH: No, General Counsel's No. 4.

MR. TURCHIN: No. 3.

JUDGE LIPTON: What is the question?

MR. TURCHIN: Will you repeat the question?

JUDGE LIPTON: I will instruct him to read back the question.

MR. TURCHIN: I am sorry, Judge.

(Question read back)

THE WITNESS: Not until today, sir.

Q Did you see the final contract that was given to Mr. Ortiz concerning and containing all the changes?

A No, sir.

JUDGE LIPTON: Were you at the meeting when he was given this final contract?

THE WITNESS: At the meeting when he was given the final contract, sir?

JUDGE LIPTON: Yes. If you know about this. Did you attend the meeting?

THE WITNESS: I attended the final meeting, but I don't know whether he was given the final contract at that meeting.

JUDGE LIPTON: All right.

Let me understand this. There was a question whether you have seen the final contract which is General Counsel No. 4?

THE WITNESS: Right.

JUDGE LIPTON: What is your answer?

THE WITNESS: Had I seen it before today, sir?

No.

Q So you don't know when Mr. Ortiz received that contract, do you?

A Excuse me?

Q You don't know when Mr. Ortiz received that contract?

A No, I do not, sir.

Q So that somebody testified that Mr. Ortiz saw the contract at the last meeting, looked through the contract and agreed to sign that contract, but would show it to his father for approval, that testimony would not be consistant with what took place at the meeting you attended?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: I will sustain it.

Q At the meeting, the last meeting you attended, was

a contract given to Mr. Ortiz which was a final contract?

MR. WEINMANN: Objection.

JUDGE LIPTON: It was asked and answered. The witness doesn't know, he doesn't recall.

Q Did Mr. Ortiz ever state at that meeting that he would give that final contract to his father and show it to his father for approval, out of respect?

A If he did state it, sir, it was not in my presence.

Q But you were there during the whole meeting?

A I was there during the whole meeting, sir, but if he did state it, he stated it to the union official and not to me.

JUDGE LIPTON: Your answer is that you are not aware of it?

THE WITNESS: That's right.

Q Now, were you told of any further meetings Mr. Ortiz had with the union?

A Any further meetings? No, sir.

Q Were you told about a meeting in June?

A No, sir.

MR. TURCHIN: I have no further questions.

JUDGE LIPTON: Any redirect?

MR. MC CULLOCH: Yes, your Honor.

JUDGE LIPTON: Proceed.

REDIRECT EXAMINATION

CSA Reporting

Q (By Mr. McCulloch) Mr. Varges, were you working for Ortiz Funderal Home in June?

A I was not, sir.

Q Mr. Varges, you testified about whether or not Mr. Ortiz had talked about the names of employees when talking about the recognition clause in the contract?

A Yes, sir.

Q Was it your testimony that he did not discuss the names of employees?

A Specific names, no, sir.

Q Let me ask that question to you again. Did he discuss the names of employees in the recognition unit?

A Names, specific names, no, sir, I don't recall him discussing specific names.

MR. MC CULLOCH: I have no further questions, your Honor.

RECROSS EXAMINATION

Q (By Mr. Turchin) Do you remember at the first meeting whether Mr. Ortiz asked the union for a list of names of people who they represented?

A A list of names?

Q That is the first meeting, April 10th.

A No, sir, I don't.

JUDGE LIPTON: Anything further?

MR. TURCHIN: I have no further questions.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of

ORTIZ FUNERAL HOME CORP.

-and-

Case No. 2-CA-13804

LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

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26 Federal Plaza
New York, New York
Thursday, January 29, 1976

The above-entitled matter came on for further hearing, pursuant to adjournment at 12:05 p.m.

BEFORE:

BENJAMIN B. LIPTON, Administrative Law Judge

APPEARANCES:

FRANK H. MC CULLOCH, ESQ.	National Labor Relations Board, 26 Federal Plaza, New York, New York, appearing as counsel for the General Counsel
N. GEORGE TURCHIN, ESQ.	253 Broadway, New York, New York, appearing on behalf of the Employer
RICHARD A. WEINMANN, ESQ.	221 Park Avenue South, New York, New York, appearing on behalf of Local 1034

C O N T E N T S

Witnesses	Direct	Cross	Redirect	Recross
Martin Adelstein	115	135	--	--
Michael Ortiz	155	187	200	--

E X H I B I T S

GENERAL COUNSEL	FOR IDENTIFICATION	IN EVIDENCE
5	122	122
6	125	127
7	131	131
8	189	
9	191	
RESPONDENTS'		
2	135	
3	137	
1		170
4	180	(Rejected) 181

PROCEEDINGS

JUDGE BENJAMIN B. LIPTON: On the record. We adjourned until twelve o'clock today at this time because of the unavailability of one of the attorneys until now. You have one witness, Mr. McCulloch?

MR. MC CULLOCH: Yes, your Honor.

JUDGE LIPTON: All right; call your witness.

MR. MC CULLOCH: I call Mr. Martin Adelstein to the stand.

MARTIN ADELSTEIN

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. McCulloch) Would you state your full name and spell your last name for the record, please?

A Martin Adelstein.

Q And your address?

A 6 Meadow Lark Drive, West Nyack, New York.

Q Mr. Adelstein, by whom are you employed?

A Local 1034, affiliated with the International Brotherhood of Teamsters, in the capacity of secretary-treasurer.

Q In that position with the union, do you become involved with contracts?

A From time to time I do.

Q Did you become involved in negotiations between Local

1034 and the Ortiz Funeral Home?

A Yes, I did.

Q Do you remember when your first involvement began?

A I was involved in a discussion on April 10th, at which time Mr. Ortiz was present and the committee from the union was present, to review the proposals that were previously submitted to management.

Q Where was this meeting held?

A This meeting was held at the union office, 221 Park Avenue South.

Q Do you remember what was discussed at that meeting? What Mr. Ortiz was saying?

A He had certain questions about some of the proposals that were submitted and others he did not, but in any event we reviewed the entire proposed collective bargaining agreement and I addressed myself to certain questions that he raised.

Q Do you remember which questions you particularly addressed yourself to?

A One question that was raised was on the unit which was contained in the agreement. He did raise a question about it and he asked that it conform to the NLRB ruling which we noted in our proposals.

He also raised certain questions pertaining to our funds, how they operate, what the level of benefits were,

which I explained to him.

Q With respect to the unit in question, was there an agreement at that meeting as to how the unit would be described?

A This I believe was the first meeting and I notice there was a discussion. After that particular meeting, I don't believe there was any further questions raised on that. I assume -- as I understood it --

JUDGE LIPTON: Never mind what you assume. You are talking now about April 10th.

A As I understand it, there was an agreement at that meeting on the unit.

Q Did Mr. Ortiz raise any questions about the meaning of the discriptive terms in the unit?

A No questions were raised to that effect.

Q Did he raise any question about the names of employees who fall under those designations?

A Not at that meeting.

Q Do you remember if the provisions on holidays was discussed at that meeting, in your presence?

A I don't recall any discussion to any extent on the holiday provision.

Q Do you recall any discussion of the severance provision at that meeting?

A Only to the extent that I explained the severance

plan, the level of benefits, method of contribution and so forth. He had no further questions on it.

Q Did he suggest any changes?

A No, he said he would think about it.

Q Did he mention any rules or regulations?

A Not at the first meeting.

Q Was there any discussion on the general ledger provision?

JUDGE LIPTON: What are you showing the witness?

MR. MC CULLOCH: I am showing him General Counsel's No. 3.

JUDGE LIPTON: What is the question? On leadership?

MR. MC CULLOCH: Was there a discussion of the general leader provision.

A I don't recall any discussion it.

Q Now, Mr. Adelstein, did you attend any other meetings between Mr. Ortiz and Local 1034 in the month of April?

A I attended one other meeting very briefly, I believe it was on the 28th. Just basically to check on how the status --

JUDGE LIPTON: Just a moment, please. The question was whether you attended and hold it there.

A Yes, I did.

Q Were you there for the entire meeting?

A No, I wasn't.

Q Could you tell us about how long you were there at that meeting?

A I would say I attended that meeting for approximately 15 minutes.

Q During the time you were there, what was discussed?

A I really don't recall any material discussions from that meeting. I observed it.

Q Did you, yourself, participate in it, did you say anything?

MR. TURCHIN: Objection.

JUDGE LIPTON: What is the objection?

MR. TURCHIN: The witness has answered that he doesn't really recall anything that occurred during that meeting and now the question is directing the witness specifically to an area where it is leading and suggesting to the witness remember something where the witness has answered in the negative in the past answer.

JUDGE LIPTON: Well, there was a characterization in the witness' previous answer that he did not recall any material discussion which as a matter of judgment I take this as an attempt to refresh, but -- I am assuming you are attempting to refresh, Mr. McCulloch and you have something specific in mind, you are not generally exploring.

The witness indicated he didn't recall and you are

asking him whether he said anything, which is rather broad.

MR. MC CULLOCH: The question, your Honor, is an attempt to discover if the witness had any input in that meeting. He has described his input in the April 10th meeting to the best of his recollection and I am trying to discover if there was any input in the later meeting in April.

MR. TURCHIN: Objection to the extent there was an input and it is not material, it ia irrelevant.

JUDGE LIPTON: If there is something that the General Counsel has a basis for anticipating the witness' answer, I want to get it in if it is pertinent. If you are generally exploring, he said he doesn't recall any material discussion, your question should be more specific. Mention the subject matter.

MR. MC CULLOCH: Let me rephrase my question and maybe I can come back around to get this information out.

Q Mr. Adelstein, do you remember what part of the meeting you attended? Let me rephrase that.

You say you were only there for a short period of time. Do you know how much longer the meeting went on after you left?

A I doknow it didn't last much longer. I had found that out later.

Q Do you know how long the meeting had been going on before you arrived?

JUDGE LIPTON: What this witness will answer would only be hearsay. I really don't know what you are looking for. If you have a particular point for the purpose of refreshing, you may mention the subject matter, if it will refresh.

Q Did you at all participate in that meeting in any discussion on the contract?

MR. TURCHIN: Your Honor, please, it is so broad that --

JUDGE LIPTON: That is very broad.

MR. MC CULLOCH: Your Honor, I am not trying to elicit from this witness --

JUDGE LIPTON: You don't have to explain, really.

MR. MC CULLOCH: I am looking for the extent of his participation and if there was no participating in the meeting, that is what I am trying to bring out on the record.

JUDGE LIPTON: You really shouldn't explain because it might -- I gather you don't have anything special in mind.

MR. MC CULLOCH: Yes.

JUDGE LIPTON: Well, unless you are seeking to refresh, then his answer should stand unless you know something.

MR. MC CULLOCH: All right, I will go on to something else.

Q Mr. Adelstein, I show you a document and ask if you can identify it.

JUDGE LIPTON: Have it marked, please.

MR. MC CULLOCH: I will have it marked as General Counsel's Exhibit No. 5 for Identification.

(General Counsel Exhibit No. 5 marked for Identification, this date.)

A Yes, I can identify this.

JUDGE LIPTON: What is it?

THE WITNESS: This is a letter with my signature, dated May 1, 1975 to Michael Ortiz and --

JUDGE LIPTON: Don't read the contents.

THE WITNESS: With a covering letter enclosing two copies of the collective bargaining agreement, final collective bargaining agreement, asking him to sign --

JUDGE LIPTON: Well, you are reading it. This is a letter sent by you with enclosures.

THE WITNESS: Correct.

JUDGE LIPTON: Go ahead, Mr. McCulloch.

MR. MC CULLOCH: I offer it into evidence, your Honor, as General Counsel Exhibit No. 5.

(General Counsel Exhibit No. 5 received in Evidence, this date.)

Q Mr. Adelstein, did you personally send this letter to Mr. Ortiz? What I mean is, did you place this letter in an envelope and place it in the mail?

A No, I didn't, my secretary did.

Q Does she do that with all your mail?

A Yes, that is the normal procedure after I sign it.

Q Did you receive a written response to this letter?

A No, I didn't.

Q Did you receive a telephone response to that letter?

A No, I didn't.

Q When was the next time that you met with Mr. Ortiz?

A I next met with Mr. Ortiz on July 10th at a meeting at our office. I attended the latter part of that meeting, it had already been in progress.

Q Who was there?

A Present at that meeting were Michael Ortiz, Bernard Adelstein, Richard Weinmann and I am not sure as to whether Mr. Fleicher was in attendance or not.

Q What was the discussion during the part of the meeting that you were there?

A While I was in attendance, Mr. Ortiz indicated there was only one question remaining before he would sign that contract and that was involving the names of the people to be covered by the contract.

Q What was the union's response to his position?

A I remember responding to him that the names should not

be a question which should affect the signing of the agreement.

I pointed out to him that since we had initially gotten the signed cards from our people, many of these people were no longer there, there were many new people, we were not up to date on who the names of the people were. I pointed out to him that in any event, the bargaining unit spoke for itself and whatever people that were performing this work would be covered by the agreement.

Q What was his response to that?

A He kept probing, wanted to know the names and I said I did not know the names and in any event, if anyone knew the names it would be him and he kept insisting that he wanted to know the names before he would sign.

And we kept pressing the issue that let's sign the contract, whatever the names are he could let us know who they are and if we were not in agreement, we could resolve that through the remedies provided for in the agreement.

I indicated at that point he wanted to think about it, but he did say he would sign the contract.

Q Did he raise any other issues during the time you were there at the meeting?

A There were no other issues raised, that was the only issue raised.

Q Did he talk about holidays?

A No.

Q Did he talk about the severance plan?

A No.

Q Did he talk about extra pay for group leaders?

A No.

Q Did he mention rules and regulations?

A No, the rules and regulations had been resolved already. He was supposed to forward to us a copy of the revised rules and regulations as were agreed to.

MR. MC CULLOCH: I'd like this marked for identification as General Counsel's No. 6.

(General Counsel Exhibit No. 6 marked for Identification, this date.)

Q Mr. Adelstein, can you identify this document?

A Yes, these are the rules and regulations that Mr. Ortiz submitted to the union?

JUDGE LIPTON: How did you get them?

Q How did you get them?

A Let's see. These were given to the -- these were handed in at the negotiations, at one of the meetings. I don't believe I was present when they were submitted. I was involved with them at a later date, but not when they were submitted.

MR. MC CULLOCH: Your Honor, I would offer these into

JUDGE LIPTON: These documents will be admitted without the changes.

What was submitted by the union?

MR. TURCHIN: Submitted by the employer, I think.

JUDGE LIPTON: Right, submitted by the employer.

MR. MC CULLOCH: Without the changes made by the union.

JUDGE LIPTON: The changes made by the union are not admitted.

(General Counsel Exhibit No. 6 received in Evidence, this date.)

DIRECT EXAMINATION

Q (By Mr. McCulloch) Mr. Adelstein, the changes reflected on General Counsel's No. 6, were those changes conveyed to Mr. Ortiz?

A Yes, they were.

Q Did he agree to those changes?

JUDGE LIPTON: You will have to lay a background or foundation for this. When, who did it?

Q Do you know when such changes were suggested to him?

A I don't recall when the date was.

Q At your meeting on July 10th, you said you discussed rules and regulations. What was the discussion?

A The discussion on July 10th involved me reminding him to send us, on his stationery, a revised copy of the agreed to rules and regulations.

Q Would the revised copy carry the changes that are reflected on General Counsel's No. 8?

A I would say they would.

JUDGE LIPTON: Let me understand something. You previously testified concerning the July 10th meeting. That a copy of the rules and regulations would later be submitted.

Then this document was shown to you as the copy you received. This copy that the union received came after the July 10th meeting?

THE WITNESS: No, this copy was submitted well in advance of the July 10th meeting.

JUDGE LIPTON: Do you recall or do you know when this copy was submitted?

THE WITNESS: I don't know the date when this was submitted, no.

JUDGE LIPTON: But it preceded the July 10th meeting?

THE WITNESS: Yes, it did.

JUDGE LIPTON: And then there was a discussion at the July 10th meeting.

THE WITNESS: A brief discussion.

JUDGE LIPTON: And there was an agreement, you say, for the company to send in the revised copy.

THE WITNESS: That's correct.

JUDGE LIPTON: Did it ever send in a revised copy?

THE WITNESS: No, it didn't.

JUDGE LIPTON: Now, when you were at the July 10

meeting, was there any discussion concerning the changes in the rules and regulations?

THE WITNESS: Not at the July 10th meeting. The changes had already been made.

JUDGE LIPTON: Did you personally see a copy of the draft of the rules and regulations with the changes, at the July 10th meeting?

THE WITNESS: No, I didn't.

JUDGE LIPTON: Do you know who made those changes?

THE WITNESS: We had suggested the changes and Mr. Ortiz had agreed to retype them on his stationery.

JUDGE LIPTON: By we, whom do you mean?

THE WITNESS: The union negotiating committee.

JUDGE LITPON: Were you there?

THE WITNESS: No, I wasn't there.

MR. TURCHIN: I ask the testimony be stricken, irrelevant.

JUDGE LIPTON: It speaks for itself. He was not there-

MR. TURCHIN: Then how can he testify what was said?

JUDGE LIPTON: The record shows the basis for his knowledge. It is hearsay.

MR. TURCHIN: That is what I move to strike.

JUDGE LIPTON: Motion denied. All right, now, what you do know is you were at the July 10th meeting and at that point, if I understand your testimony, the matter

concerning the rules and regulations had been resolved and it was a question of waiting for the submission of a revised copy containing all of the changes to be received by the union from the company.

THE WITNESS: That's correct.

JUDGE LIPTON: All right, Mr. McCulloch.

Q After July 10th, when did you next hear from Mr. Ortiz or from the funeral home?

A Mr. Ortiz was supposed to be up in our office to sign a contract the very next day on the 11th. He did not come and I called his office twice and I spoke to his girl, not him.

He never called me back that day.

The next notice of any kind that I received from his office was on the 15th of July, his secretary or bookkeeper named Edna had called in three names which represented the three people that he claimed would be covered by the collective bargaining agreement.

JUDGE LIPTON: Now, just a moment.

You personally spoke to this person Edna?

THE WITNESS: No, I received a message from her.

JUDGE LIPTON: You are going to have to get your evidence indirectly, Mr. McCulloch. This is hearsay.

Q Did you talk to Mr. Ortiz after you received this note?

A Yes, I did. I believe the next day, the 16th.

Q Did you talk to him in person?

A I spoke to him in person.

Q What was said at that conversation?

JUDGE LIPTON: Who called whom?

A I called him and I advised him we received the list of names, but we were not accepting them as the number of people that would be included in the unit and I suggested in any event we will resolve that question, but he was still to come up and sign the agreement, he did not fulfill his word of coming up on the 11th and I advised him this matter must be resolved by the end of the week.

At that time he promised he would be up on the 17th or 18th to sign the agreement.

JUDGE LIPTON: You told him it must be signed by the end of the week.

THE WITNESS: That's correct.

JUDGE LIPTON: What did he say?

THE WITNESS: He said it would be, he would be up to our office.

JUDGE LIPTON: Go ahead, Mr. McCulloch.

MR. MC CULLOCH: I'd like this marked as General Counsel Exhibit 7.

(General Counsel Exhibit No. 7 marked for Identification, this date.)

Q Mr. Adelstein, when you are not in your office and people call you, are messages taken for you?

A Absolutely.

Q Are records of these messages kept?

A Yes, they are.

Q Are they kept as -- on a day to day basis? Are records kept of all telephone messages?

A Yes, they are.

Q Now, I show you the document that has been marked as General Counsel's No. 7 and ask you to identify it.

A This is a message that was given to me indicating --

JUDGE LIPTON: Don't read the contents. It was a message that was given to you?

THE WITNESS: That's correct.

Q Who gave you the message?

A Sonia, one of the secretaries in our office.

Q Is it her responsibility to give you messages of this sort?

A Yes, it would be.

JUDGE LIPTON: What was the date that you got the message?

THE WITNESS: The date was July 15th.

JUDGE LIPTON: This is when you received the message?

THE WITNESS: That's correct.

MR. MC CULLOCH: I offer it into evidence as General Counsel's Exhibit No. 7.

JUDGE LIPTON: What is the purpose of the offer?

MR. MC CULLOCH: The purpose if to show your Honor that on the 15th of July Mr. Adelstein received a message from the Ortiz Funeral Home --

JUDGE LIPTON: Without reading the content, this is a message from the respondent or purports to be. Are you trying to introduce the content of that message by the fact it is written on the slip of paper --

MR. MC CULLOCH: Your Honor, the witness has testified that he was informed of certain positions of the respondent on that date, that he tried later to call the responden- and when he got in touch with him, this information was confirmed at a later call. I am trying to place the time of the initial information being given to him.

JUDGE LIPTON: Are you offering this now, as you say, and your purpose is to show that a certain specific message was related to a telephone operator and then given in written form to this witness?

MR. MC CULLOCH: That's correct, your Honor.

JUDGE LIPTON: What is your position on this, Mr. Turchin?

MR. TURCHIN: I would object, sir, because I think it is immaterial, I don't think it is relevant and doesn't

go to the heart of the issue, but if General Counsel wants to offer it, I have no objection.

(General Counsel Exhibit No.7 received in Evidence, this date.)

JUDGE LIPTON: Now, your previous testimony, Mr. Adelstein, was that you received a telephone call from Edna. Is this what you are referring to? You didn't personally speak to her, but you just got the message?

THE WITNESS: That's correct.

JUDGE LIPTON: All right, it is received.

Proceed, Mr. McCulloch.

Q Mr. Adelstein, during your conversation with Mr. Ortiz on the telephone on the 16th of July, did he say to you that he wanted to talk about holidays?

A No, he didn't.

Q Did he say to you that he wanted to talk about severance pay, severance plan?

A No, he didn't.

Q Did he say he wanted to talk about extra pay for group leaders?

A No, he didn't.

Q Did he raise the rules and regulations as an issue?

A No, he didn't.

Q After that telephone call, did he come to the office?

A No, he didn't.

Q Did you make any attempts at the end of that week or on the 17th or 18th to contact Mr. Ortiz?

A I believe I called him -- I called him on the -- I spoke to him on the 16th and he indicated he would be present before the end of the week was out, so I don't recall making any further calls.

MR. MC CULLOCH: No more questions at this time, your Honor.

CROSS EXAMINATION

Q (By Mr. Turchin) Who is Mr. Bernard Adelstein?

A Mr. Bernard Adelstein is president of Local 1034.

Q Now, I show you a copy of papers submitted in the Supreme Court, County of New York, with your affidavit and Mr. Bernard Adelstein's affidavit and ask you if you are familiar with these papers?

JUDGE LIPTON: Have them marked, first.

MR. TURCHIN: Yes, I just want to ask if he is familiar with them and then I will have them marked.

JUDGE LIPTON: No, have them marked first.

MR. TURCHIN: All right.

JUDGE LIPTON: This is respondents' Exhibit No. 2.

(Respondents' Exhibit No. 2 marked for Identification, this date.)

Q Are you familiar with these papers?

A I am not familiar with all the papers.

Q You mean you submitted an affidavit to the court without knowing what you were submitting an affidavit about.

JUDGE LIPTON: He answered that he was not familiar with all the papers. That would not exclude his own affidavit. Why don't you get directly to the point. Are you concerned with his own affidavit?

MR. TURCHIN: I am concerned with information in the papers, sir.

JUDGE LIPTON: Well, put your next question, what is he familiar with.

Q I show you a statement in the affidavit of Bernard Adelstein, stating that meetings took place with Mr. Ortiz.

JUDGE LIPTON: Don't read it out. You can't read it out and put it in the record. They're not in evidence whatever at this point. This is an affidavit of Bernard Adelstein you are questioning him about.

MR. TURCHIN: Yes, as part of the papers submitted to the court.

JUDGE LIPTON: What is your question? Are you trying to get this witness to affirm something in an affidavit of some other person?

MR. TURCHIN: No, sir, I am trying to see if I can refresh the witness' recollection as to the contents of

materials submitted to the Supreme Court, New York County by the president and secretary-treasurer of this union.

MR. WEINMANN: I will object. I don't see the relevance to that.

JUDGE LIPTON: I don't either at this point. If you want to refresh, just ask him directly what you want to know. You don't have to show him anything, ask him a question.

MR. TURCHIN: I show you a notice to conduct arbitration and ask you if you are familiar with this and ask it be marked Respondents' Exhibit No. 3 for Identification.

(Respondents' Exhibit No. 3 marked for Identification, this date.)

JUDGE LIPTON: What is the question on this?

Q I ask you if you are familiar with this notice to conduct arbitration?

JUDGE LIPTON: Have you seen it before?

THE WITNESS: Yes, I have seen this notice.

Q Is that your signature on the bottom?

A That is my authorized signature.

MR. TURCHIN: I offer it in evidence.

THE WITNESS: What is the relevance.

MR. MC CULLOCH: Objection as irrelevant.

JUDGE LIPTON: What is your purpose?

manner.

Q Are you familiar with the facts, sir, that Mr. Bernard Adelstein met with Michael Ortiz on May 27th and June 3rd, 1975?

JUDGE LIPTON: May 27th?

MR. TURCHIN: May 27th and June 3rd, 1975.

JUDGE LIPTON: Is this witness familiar? You may answer that.

THE WITNESS: I am not familiar.

Q Does the affidavit of Mr. Bernard Adelstein, concerning these two negotiating meetings, refresh your recollection?

JUDGE LIPTON: You are proceeding improperly.

MR. WEINMANN: Objection.

JUDGE LIPTON: It is sustained.

Q Weren't you present at one of these meetings on June 3rd, 1975?

A I don't recall.

Q Well, don't you recall a meeting where Mr. Ortiz was present and you were present and Bernard Adelstein was present, and Mr. Weinmann was called in, to discuss the settlement agreement and the dispute as to what was contained in that settlement agreement?

A What was contained in the settlement agreement?

Q Yes.

A I don't recall.

Q Don't you recall a conversation as to a representation by Mr. Bernard Adelstein that there were a minimum of 18 or 21 employees covered under the proposed collective bargaining agreement and unit?

A No, I don't recall.

Q What do you recall about that meeting?

A I don't recall anything about the meeting.

Q But you remember being there?

A I didn't say I was there.

Q Were you there?

A I don't recall.

JUDGE LIPTON: The question was repeatedly answered in the negative, that he didn't recall.

Q How many funeral homes does Ortiz Funeral Home have?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: What is the purpose of this? It is beyond the scope unless you have a particular purpose.

MR. TURCHIN: The purpose is to go into the areas testified to by the witness.

JUDGE LIPTON: By this witness?

MR. TURCHIN: Yes, as to the July 10th, 1975 meeting and as to what was said at that meeting.

JUDGE LIPTON: Why don't you just ask him what was said at the July 10th meeting?

MR. TURCHIN: Judge, this is still cross exmaination.

intimate contact with the respondent prior to April 28th.

JUDGE LIPTON: Yes, I am going to sustain the objection, particularly as to form.

Q I show you General Counsel's Exhibit No. 3 and ask you if you are familiar with that collective bargaining agreement.

A Yes, I am.

Q I ask you to look at Appendix B and ask you if you are familiar with that?

A No, I am not familiar with Appendix B.

Q Does that call for a list of names of employees?

MR. MC CULLOCH: The document speaks for itself.

JUDGE LIPTON: All right, sustained.

Q At any time did the issue of the amount of employees covered in this unit ever come up in your conversations with any of the people you discussed the collective bargaining agreement with?

A Yes, they did.

Q And with whom did that come up?

A Mr. Ortiz.

Q And did you tell Mr. Ortiz how many people were covered under the collective bargaining agreement?

A No, I didn't.

Q Would it have made a difference in the amount of costs Mr. Ortiz would have had under this collective bargaining

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agreement.

MR. WEINMANN: Objection.

MR. LIPTON: Sustained.

Q Are you familiar with negotiations?

A I certainly am.

Q And is the question of the cost of a collective bargaining agreement a material factor?

MR. MC CULLOCH: Objection, your Honor.

JUDGE LIPTON: I really don't know where you are going at this point. Are you speaking in the abstract?

MR. TURCHIN: No, this man is a witness of the General Counsel that they have placed on the stand as a party who is expert or familiar with collective bargaining negotiations, who participated in these negotiations and I am testing if this man is an expert and if he is, I want to question him on that.

JUDGE LIPTON: If that is your purpose, objection sustained.

Q Now, I show you Respondents' Exhibit No. 3 for Identification and ask you if this sets forth a statement of disputes at local union 1034 --

JUDGE LIPTON: Don't answer that question yet. Finish your question.

Q (Continuing) -- had with Ortiz Funeral Home.

MR. WEINMANN: Objection.

JUDGE LIPTON: Now, this document is not admitted and I think you are persisting in the same line and you are asking him to verify the contents which were not admitted.

I will sustain the objection.

Q Well, did you have a dispute with Ortiz Funeral Home Corp.?

JUDGE LIPTON: I will sustain an objection on that. It is much too broad. What is the dispute and when?

Q On the 16th of July 1975, did you have a dispute with Ortiz Funeral Home Corp.?

JUDGE LIPTON: You will have to be more specific.

Q With reference to the collective bargaining agreement?

A Yes, we did.

Q And did you file a notice of contention to conduct arbitration?

A The notice was filed.

Q Did that contain the statement of the disputes between Local 1034 and Ortiz Funderal Home Corp.?

MR. MC CULLOCH: Objection, your Honor.

JUDGE LIPTON: I am going to sustain it because I think you are trying to get indirectly what has been ruled out directly. I don't know whether this dispute you are referring to has anything at all to do with this case.

MR. TURCHIN: It is referring to the collective

bargaining agreement that was in evidence as General Counsel's Exhibit No. 4 and that is what I am asking him.

JUDGE LIPTON: Just a moment. All right, you may ask him on Respondents' No. 3, if he can identify it.

Q Can you identify that notice?

A Yes, I can identify it.

Q And does that refer to a dispute?

JUDGE LIPTON: No, don't ask him to put it in.

Q With reference to General Counsel's Exhibit No. 3, the collective bargaining agreement between Ortiz Funeral Home and Local 1034 --

JUDGE LIPTON: Was it the collective bargaining agreement?

MR. TURCHIN: The alleged collective bargaining agreement.

JUDGE LIPTON: Now, we know at this stage in the hearing what is in issue and we already know that General Counsel's No. 3 was just a form for negotiations. It was a proposed contract. Your question is improper and I am going to sustain the objection.

MR. TURCHIN: They introduced this as the final contract, sir.

JUDGE LIPTON: All right, is General Counsel's No. 3 the alleged contract, is that your question?

MR. TURCHIN: And does the notice of contention to

arbitrate reflect a dispute with reference to this contract?

MR. WEINMANN: Objection.

JUDGE LIPTON: What is your purpose?

MR. TURCHIN: The position of the General Counse is that all the terms and conditions had been agreed upon and that there was nothing further to negotiate and that my client refused to sign the collective bargaining agreement in spite of the fact that all the terms and conditions were agreed upon. It is our position that all ther terms and conditions were not agreed upon and that as part of that fact, a notice of contention to conduct arbitration was filed, setting forth a statement of disputes between the parties and that was not testified to by the witness.

JUDGE LIPTON: Well, forget about General Counsel's No. 3, we already know what General Counsel's No. 3 is.

Now, you have Respondents' No. 3 which has been identified. Are you offering Respondents' No. 3?

MR. TURCHIN: Yes, sir.

JUDGE LIPTON: Any objection to Respondents' No. 3?

MR. WEINMANN: What is Respondents' No. 3?

JUDGE LIPTON: The notice of intent to file for arbitration.

MR. WEINMANN: I am objecting, on the grounds it is irrelevant. I don't see what it has to do with the case.

JUDGE LIPTON: May I see it, please?

(Handing)

JUDGE LIPTON: I am going to reject this and put this in the rejected exhibit file.

(Respondents' Exhibit No. 3 marked rejected to file, this date.)

MR. TURCHIN: May I make an offer of proof with reference to this?

JUDGE LIPTON: How can you make an offer of proof? It stands by itself as an offer of proof and you have a witness on the stand on cross examination and offers of proof are not made on cross examination. Except in extraordinary circumstances and I will not permit it now.

Q Now, on July 16, you called on Mr. Ortiz and told Mr. Ortiz that you were not accepting the names of the employees that he alleged were in this unit; is that correct?

A Not exactly.

Q Will you tell me what you told Mr. Ortiz with reference to the list of employees that he called in?

A I stated these were not the entire bargaining unit list of employees.

Q And did you tell him who the entire bargaining lists were?

A No, I didn't.

Q Were you familiar with the size of Mr. Ortiz'

operation?

A As to the number of people?

Q As to number of people and number of funeral homes.

A Wasn't that objected to once already?

JUDGE LIPTON: Just answer the question.

A No, I wasn't.

Q You didn't know the amount of funeral homes that Mr. Ortiz had?

JUDGE LIPTON: I will sustain the objection on this. The question was previously asked, objected to and the objection was sustained and you keep persisting and keep wasting time and you are wandering all over the lot on very, very remote matters.

Q Wasn't there a strike at Ortiz Funeral Homes?

A Yes.

Q Didn't you have pickets at all the sites?

A Yes, I believe we did.

Q Were you familair with the picketing?

A To some extent.

Q How many sites did you have pickets at?

A I don't recall.

JUDGE LIPTON: Let us see if we can clear this up. The question was relevance and the objection was sustained on relevance.

MR. TURCHIN: Credibility, Judge.

MR. TURCHIN: It is credibility, Judge, that is the point.

JUDGE LIPTON: I do not permit you to ask questions upon your contention of credibility. That is in the particular areas already covered in the record.

Q Were any employees excluded from the proposed collective bargaining agreement marked General Counsel Exhibit No. 3?

MR. MC CULLOCH: Objection, it speaks for itself.

JUDGE LIPTON: Sustained.

Q How many of the employees of Ortiz Funeral Home were excluded from the unit?

MR. WEINMANN: Objection.

JUDGE LIPTON: Sustained.

Q Were any of the employees of Ortiz Funeral Home, to your knowledge, excluded from the unit?

MR. MC CULLOCH: Objection. The question --

JUDGE LIPTON: Sustained.

Q In a funeral home such as the Ortiz Funeral Home, for each funeral parlor, what would be the minimum amount of attendants, receptionists, porters, in your experience --

JUDGE LIPTON: I'll sustain the objection on that. Hypothetical.

Q Are you familiar with the amount of people required in a funeral home?

JUDGE LIPTON: I will sustain an objection on that.

You are persisting in the same area. It is abstract and I am going to caution you, Mr. Turchin, that you keep persisting in very, very remote areas and I don't know if it is a matter of your understanding or lack of understanding or mere deliberate necessity or defiance of rulings.

MR. TURCHIN: I am not trying to defy your Honor --

JUDGE LIPTON: You are wasting time.

MR. TURCHIN: I believe I have a client to protect and I am trying to go it in the best way possible.

JUDGE LIPTON: The best way possible does not permit you to take extraordinary liberties on this record.

Q Now on July 16, 1975 you told Mr. Ortiz you were not accepting his list of names?

MR. WEINMANN: Objection on the date.

JUDGE LIPTON: What was the date?

MR. MC CULLOCH: I believe the 16th was the date.

JUDGE LIPTON: All right, you can review. The date is -- what is the date in your question?

MR. TURCHIN: The 16th, sir.

MR. WEINMANN: I am sorry.

JUDGE LIPTON: You may answer.

A I told Mr. Ortiz I was not accepting the list of names he gave to me on the 16th or that was given to me on the 15th, as the entire number of people covered by the collective bargaining agreement.

JUDGE LIPTON: This is repetitious.

Q Would the amount of people be a material factor --

MR. WEINMANN: Objection.

JUDGE LIPTON: Sustained.

Q In the --

JUDGE LIPTON: Sustained. It calls for a conclusion.

Q Is it important to know the amount of people who would be covered in the collective bargaining agreement?

MR. WEINMANN: Objection.

JUDGE LIPTON: Sustained.

Q In your experience, Mr. Adelstein, in negotiating contracts, is the amount of people who were covered an important issue in the negotiations?

MR. WEINMANN: Objection.

JUDGE LIPTON: Sustained.

Now, you have had rulings on this and I am cautioning you. If you keep wasting the court's time, I am going to have to take some measures.

MR. TURCHIN: I have no further questions.

JUDGE LIPTON: Any redirect?

MR. MC CULLOCH: No further questions, your Honor.

JUDGE LIPTON: The witness is excused. Thank you.

MR. MC CULLOCH: Your Honor, at this time, General Counsel has no further witnesses to call in this matter.

JUDGE LIPTON: General Counsel is prepared to rest

and does rest.

MR. MC CULLOCH: And does.

JUDGE LIPTON: All right, we will take a little recess and you have one witness, you indicated, and that is Mr. Ortiz?

MR. TURCHIN: Yes.

Can I have a moment, sir?

JUDGE LIPTON: State it on the record.

MR. TURCHIN: My wife is being treated for chemotherapy for a condition she suffers from. I have been trying to keep in contact with certain people with reference to this matter and I have been involved all morning in this matter and haven't had any breakfast, except a cup of coffee and I'd like to have some lunch since it is 1:30 and I want to make some telephone calls referring to my wife.

JUDGE LIPTON: You were aware this case was on yesterday and it was indicated it would take two days. Now, you were given latitude last night upon your statement you had to accompany your wife to a doctor's appointment and you were granted that and you indicated you would be back at noon. So the case was set at noon. Now, you cannot have these continuances. You indicate you want some time to have a cup of coffee?

MR. TURCHIN: I'd like to make some telephone calls also. I have some calls I should make as to who should pick

my wife up and who should be there and how she should get home.

JUDGE LIPTON: All right, we will have a recess of twenty minutes.

We'll make it a quarter to, promptly.

(Recess called)

AFTER RECESS

JUDGE LIPTON: Back on the record.

MR. TURCHIN: I call Mr. Michael Ortiz.

MICHAEL ORTIZ

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Turchin) Mr. Ortiz, are you associated with Ortiz Funeral Home Corp., the respondent in this matter?

A I am.

Q In what capacity?

A President.

JUDGE LIPTON: State your name and address, please.

THE WITNESS: Michael C. Ortiz. 190 East 72nd Street.

Q Did there come a time in April when you entered into negotiations with Local 1034?

A I did.

Q Now, prior thereto, did you sign a settlement agreement,

agreeing to a particular unit that you would recognize Local 1034 as the collective bargaining agent for that unit?

A I did.

Q Now, on April 10, 1975, did you meet with the union concerning the collective bargaining agreement?

A I did.

Q Where did you meet?

A At the union offices.

Q Who was there?

A They had the committee for the employees, there was a Mr. Fleicher and Alan Adelstein.

Q Now, at that meeting, were you given a proposed contract?

A I was.

Q Did you examine the proposed contract?

A I did.

Q I show you General Counsel's Exhibit No. 4 in Evidence and ask you if this is the proposed contract or a copy of the proposed contract you were shown?

A It is.

Q Would you tell me what objections you raised to this contract?

A Well, the objections I raised to the contract were the recognition --

Q When you say recognition, would you tell me what you said and what was said to you?

A Well, I told them that I wanted the part of the recognition to read as it is stated in the settlement agreement of the National Labor Relations Board.

Q And would you tell me which categories of workers you would agree to recognize, that is, the title?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: I don't understand the question. Let him testify to what he objected to.

Q Would you tell me what you objected to with reference to the recognition?

A I objected to, that it wasn't written as it was stated in the settlement agreement as agreed with the National Labor Relations Board.

Q What other parts of the contract did you object to?

A I objected to the parts of the holidays, I wanted a layoff clause.

JUDGE LIPTON: A what?

MR. WEINMANN: Layoff clause.

JUDGE LIPTON: Is that in addition to the holiday provision?

MR. WEINMANN: Yes.

JUDGE LIPTON: Are you going to take one at a time as to what was discussed or do you want to outline them first?

MR. TURCHIN: I thought if we outlined them first, we could move more quickly.

A Holidays, general leader, bereavement pay, use of automobiles, severance pay. I wanted a provision where I was able to use or rather contract maintenance people to do certain types of work and there was a part there, I don't see it here, about paying 30¢ for disability, a 30¢ disability deduction and I believe --

JUDGE LIPTON: Were all of these matters which you raised, at the April 10th meeting?

THE WITNESS: Yes, sir.

A And I believe that is all that I can remember right now.

Q Now, was a meeting scheduled with reference to your objections to the collective bargaining then discussed?

A Yes, it was.

Q When was the next meeting?

A I believe it was the latter part of April. I think it was the 28th.

Q Now, at that meeting, were you given a contract with any changes in the proposed collective bargaining agreement?

A No, I was not.

Q Would you tell me what was discussed at that April 28th meeting?

A Well, that April 28th meeting, I asked him how come they didn't give me any answers regarding these particular changes I wanted and they said and I believe it was Alan Adelstein who was there also and he said that they had to check certain things out with their counsels.

I also told him I wanted a list of all the employees that they had covered in the unit.

I also asked them for a clarification regarding the recognition, that I wanted it spelled out the way it was in the National Labor Relations Board.

Q Did you, on April 28, 1975, agree to execute the collective bargaining agreement?

A No, sir.

Q When was the next communication you received from Local 1034?

A The next communication I received from them was by mail about the beginning of May, where I received a letter and two copies of another contract.

Q Now, did you examine this other contract?

A I did.

Q Was that General Counsel Exhibit No. 3 in Evidence?

A It is.

Q What did you then do with reference to that letter and that contract, proposed contract that was enclosed?

A I called the union office and I spoke to Mr. Bernie

Adelstein.

Q What did you do?

A I asked him how come the changes weren't made in here, I asked him about the list of the employees I wanted and the work schedule. So he told me to come down to his office and talk to him about it.

Q When did you go?

A I went to his office, I think the appointment was May 27th.

Q And at the May 27th, 1975 meeting, who was present?

A It was Mr. Adelstein --

JUDGE LIPTON: Which one?

MR. WEINMANN: Bernard Adelstein.

A (Continuing) -- myself and I don't remember if Alan or Martin Adelstein was there. I don't remember which one offhand right now.

Q What did you tell Mr. Bernard Adelstein with reference to this contract?

A Well, he was talking to me -- I asked him -- I says what about the men you have covered in this unit and he said don't worry about it, we will work this out later on. I said there are other questions about the holidays, the bereavement pay, the severance and he says these are things we can work out later on and he said why don't you sign it and work these out later on and I said no, I got to know what

my costs are and what this thing is going to run me. I want to know how many men were included in the unit.

Q What did Mr. Adelstein say, Mr. Bernard Adelstein say about the people included in the unit?

A He said he wanted to look at my payroll book or have someone look at my payroll book and I said no problem.

Q Thereafter did anyone come to your office?

A Mr. Fleicher.

Q When was that?

A Right after that meeting in May.

Q Did Mr. Fleicher examine any books or records in your office?

A He did.

Q What books and records did he examine?

A My payroll books. He made some notations and we had further discussion about it and he left.

Q Now, thereafter, did you have any further meetings with the union?

A Yes, another meeting was arranged, I believe, by Mr. Fleicher and Mr. Adelstein around June the 3rd or June the 4th.

Q Where was this meeting?

A At his office once again.

Q Who was present?

A In the beginning, I was present, Mr. Adelstein --

Bernard Adelstein was present and Martin Adelstein.

Q Would you tell me what was said at that meeting?

A Well, I went in to his office, we sat down, we started talking and he says to me, you know --

JUDGE LIPTON: Bernard Adelstein.

A He says to me, you know, I haven't made a wooden nickel on this deal yet, you owe me a hell of a lot of money for back benefits. I said what do you mean?

He said we got some 20-odd people in the shop. I said where do you get that? As far as I know, there are only three or four people at the present time.

He said, what do you mean?

I said, well, that is what the agreement called for, it called for a certain limited unit that was spelled out in the settlement agreement clause.

So then he asked his son Marty for a copy of the settlement agreement and Mr. Martin Adelstein said he didn't have one, that he would get one, so I believe he went to Mr. Weinmann's office and he brought back a copy of the settlement agreement.

Q Do you know where Mr. Weinmann's office is?

A It is somewhere on their floor there. I don't know exactly where. It is in the back part of the building, not too far from where we were.

Q Tell me what occurred when the settlement agreement was brought in.

A Well, he brought the agreement in and he hread it and he found out that after reading it that he had the impression that it included my whole shop, which it didn't.

JUDGE LIPTON: Is that what he said?

MR. WEINMANN: Yes.

A So then he called on the telephone for Mr. Weinmann to come into his office. So Mr. Weinmann came in and he said, he said, "Hey, Dick, what the hell is this, I thought we had the whole shop."

He said were you prsent when this thing was signed and he replied no he wasn't. Then he said who was there.

He said Mr. Fleicher. So then they had some words among them, they asked me to leave the room. I left the room, they put me into another office on the side there and they had some discussion among themselves. So I came back after a while they called me back in the office, I sat down and they started proceeding to ask me to sign the contract the way it was. I said I wasn't going to sign it unless I knew exactly who was included in the unit.

Q Did you tell Mr. Adelstein why it was important who was included in the unit?

A Sure. I wanted to know what my cost was going to be. I wasn't going to sign something unless I knew who was included.

Q What conversation did you have with Mr. Adelstein

further at that time?

A He stood up from his desk, he picked up his papers and said, "Fuck it," he said to his son Marty, "We'll go for broke, fuck it. We'll strike tomorrow." Then I was taken back --

JUDGE LIPTON: Never mind you were taken back, just what you said.

A As I was leaving and he called me back and said is there any way to resolve the matter and I said sure, give me the names included in the unit, I got to know. So he asked me if I would come back another date, I offered to bring back my books so he could go over it himself if he wanted to and he said all right and I left.

Q Now, was another meeting then scheduled with Mr. Adelstein?

A Another meeting was scheduled for July 10th.

Q And during that period, from the meeting of June to June 10th, what if anything occurred?

A Well, I -- at that time I think it was the 4th of July weekend. I went away and when I came back I received a charge from the National Labor Relations Board. I -- the same day I received it, I called Mr. McCulloch and spoke to him on the phone and I said, "What is this all about?"

I said, "Can I come down and see you about it?"

So I went down to his office that afternoon or the

next day and I asked for an explanation and he said he didn't know. So I said, "You know, I have been having meetings and bargaining with them up until this very --" you know -- I think -- it was either that same day I had the appointment or the day after.

I said to him, "Should I keep my scheduled appointment with them or what should I do?"

He told me that he couldn't really advise me, but that I should keep my agreement. I said, well, I planned to.

Q What did you then do?

A Well, I went to the union office that particular day we had the meeting and I brought my --

Q Would that be July 10th?

A That was July 10th.

Q Would you tell me who was present at that meeting?

A I was -- Mr. Bernie Adelstein, I was present and Martin Adelstein, I believe.

Q And would you tell me what was discussed at that July 10th meeting?

A Well, once again he asked me to sign the contract and I said I still won't sign it unless he specified in there the names of the people covered by this contract and the names of the people excluded from this contract.

Q Did you explain to him the reason why that was necessary?

A I told him my cost depends on it. I had to know exactly what this thing was going to cost me. That I wasn't going to sign anything in blank. So then he said to me let us go to the arbitration board and let them settle it and I said why, we can settle it right now. That is what we are here for, to settle the matter, instead of taking it to the arbitration board.

Q What was then said?

A He just kept pushing the contract in front of me to sign, he said sign it, don't worry about it, we'll take care of it later on.

I said no way. I am not going to sign unless you put down the names of the people included in the contract.

Now, I seen another contract they signed with another funeral home --

JUDGE LIPTON: Just a moment. This is at the meeting.

THE WITNESS: Yes.

JUDGE LIPTON: This is what you said to him?

THE WITNESS: Yes, there was another contract for the Ponce Funeral Home and in this contract they specified the names of the people covered in the contract, their salary and their title.

Q Now, I show you --

A And I wanted the same thing for myself also. He said he wasn't --

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JUDGE LIPTON: Did you have that contract with you at this meeting?

THE WITNESS: He showed it to me.

JUDGE LIPTON: He showed it to you?

THE WITNESS: I knew --

JUDGE LIPTON: Just a moment. At this meeting Mr. Bernard Adelstein showed you the contract?

THE WITNESS: A copy of the contract they had with Ponce. I believe he had somebody go out to another office and bring it in and I said I was familiar with it, I had seen it before. From the very beginning of our negotiations they were going to give me more or less the same contract they had given these people.

JUDGE LIPTON: Who told you that?

THE WITNESS: At the first negotiation meeting we had.

JUDGE LIPTON: And who was it that said it?

THE WITNESS: Mr. Fleicher.

Q Now, I show you --

JUDGE LIPTON: What did Fleicher say at that meeting?

THE WITNESS: When they first gave me the proposed contract, he said this is a contract similar to the one that they gave the Ponce Funeral Home.

Q Did you know Ponce Funeral Home?

A Yes, sir.

CSA Reporting

Q Is Ponce Funeral Home a competitor of yours?

A Yes, it is. My biggest competitor.

Q I show you a collective bargaining agreement between Local 1034 and Ponce Funeral Homes and ask you if this is a copy of the agreement you were shown by Mr. Adelstein?

JUDGE LIPTON: Is that the contract already marked Respondents' No. 1?

MR. TURCHIN: Yes, sir.

MR. WEINMANN: Is this allegedly at the July 10th meeting?

JUDGE LIPTON: You can address the bench.

MR. WEINMANN: I am sorry, your Honor. I would object unless the question is more specific as to when the contract was --

JUDGE LIPTON: He has already testified he was shown a Ponce contract. The question is, now, was this the contract you were shown?

THE WITNESS: Yes, sir.

JUDGE LIPTON: At that meeting?

THE WITNESS: At that meeting.

JUDGE LIPTON: Did you look it over at that meeting?

THE WITNESS: I didn't look at it in detail, but I went through it.

JUDGE LIPTON: And you are able to identify this as the contract you were shown?

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right.

Q And does this contract -- I offer it in evidence.

JUDGE LIPTON: It is offered then for the purpose of showing the particular contract, the Ponce contract that this witness examined and was shown at the July 10th meeting?

MR. TURCHIN: And I draw your Honor's --

JUDGE LIPTON: I don't know for what other purpose there is.

MR. TURCHIN: I draw your Honor's attention to Schedule B.

JUDGE LIPTON: You don't have to draw any attention at this point. So far, there was a contract shown to him at the July 10th meeting and he identified this contract. Then you are offering this to corroborate his testimony that he was shown a Ponce contract?

MR. TURCHIN: Yes, sir.

MR. WEINMANN: May I see it, please?

(Handing)

MR. MC CULLOCH: This has been offered, your Honor.

JUDGE LIPTON: It has been offered.

MR. MC CULLOCH: I have no objection to it being -- coming into evidence for the limited purpose shown.

JUDGE LIPTON: That is all it is offered for at this point.

MR. MC CULLOCH: I also call your attention to Page 15 in the contract.

JUDGE LIPTON: You can call attention to anything later, if it is relevant, but the purpose now is to identify a copy of the contract, the Ponce contract which was shown to the witness at the July 10th meeting. It is admitted without objection.

(Respondents' Exhibit No. 1 received in Evidence, this date.)

Q Now, did you point out to Mr. Adelstein that the Ponce contract contained a list of employees?

JUDGE LIPTON: You are leading the witness. I will cut you off at this point. Ask him what was said.

Q What did you say to Mr. Adelstein concerning the Ponce contract and your contract?

A I said to him how come mine doesn't have a schedule of employees like Ponce does?

Q What did he say?

A He said he didn't know how many men were in my unit.

Q What did you say to him?

A I said I offered you my books to look at. I even brought them up that same day and I didn't go through with

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them.

Then he went into this business that I owed him this money in back benefits and I said what for, I didn't agree to no contract with you. Then I said how come you come up with this strong-armed tactic all of a sudden, filing these charges with the National Labor Relations Board.

So he said this is only a way for me to protect myself because I was supposed to coolect some monies from this welfare pension business, the fund. So then he started quoting some law to me.

Then Mr. Weinmann came into the room and -- after he quoted this law to me, he brought Mr. Weinmann in to corroborate what he had said, whether he was right or not. That I was obligated whether or not I signed the contract with him, that I still owed him this money.

So then I proceeded to tell him how much money do I owe you.

JUDGE LIPTON: He called Mr. Weinmann in to corroborate. What did Mr. Weinmann say?

THE WITNESS: Mr. Weinmann agreed with him.

A So then I said, "How much money do I owe you if I owe you anything?"

I said, "How many men do I have in the unit?"

He still couldn't answer me.

Q Now, with reference to the statement --

JUDGE LIPTON: I am sorry, I wanted to get it clear. You are talking about Bernard Adelstein?

THE WITNESS: Yes, sir.

JUDGE LIPTON: Okay, go ahead.

Q Going back to the meeting in June, what did Mr. Adelstein tell you with reference to the amount of people who were supposedly covered by this agreement?

A He told me not to worry about it, they would fill it in later on, to go ahead and sign the contract so they can get the show on the road as he said.

Q Did you ever see a number as to what they alleged were covered by the agreement?

A Yes.

Q How much was that number?

A Twenty-one people.

Q How many people did you have employed at that time?

A In that particular unit?

Q No, all your whole shop.

A Around 25 people or so.

JUDGE LIPTON: Hold it a moment. You are going to have to lay a proper predicate for this conversation. Where he was shown the number of employees, by whom and when.

Q I show you General Counsel's Exhibit No. 1 in Evidence and refer you to --

JUDGE LIPTON: What is the purpose of this?

MR. TURCHIN: I am showing the number of people they represent. They have a number here.

JUDGE LIPTON: He testified they showed him a number and let him testify. Unless you mean that you got the number 21 from reading a copy of the charge.

THE WITNESS: No, he didn't show me a number physically with any papers or anything. He said you got 18 or 21 people in your shop.

JUDGE LIPTON: Hold it.

What day is this?

THE WITNESS: That was the June 3rd meeting.

JUDGE LIPTON: The June 3rd meeting, this is Bernard Adelstein, he said he has 18 to 21 in his shop.

THE WITNESS: He said "You got 18 to 21 people in your shop and I haven't collected a nickel."

I said, "Where did you get 18 or 21 people?"

I said, "I have only got three or four people in the unit."

JUDGE LIPTON: You have just testified that as of June the 3rd, you had employed 25 employees and there is a question there whether these are employees in the unit or not in the unit or whether they're supervisors or watchmen or whatever.

THE WITNESS: Exactly.

JUDGE LIPTON: But you had a total payroll of 25?

THE WITNESS: Approximately 25 people.

JUDGE LIPTON: This is a verbal statement, okay. Please proceed.

Q Have you produced your books and records pursuant to subpoena and delivered those books and records to the National Labor Relations Board?

A I have.

Q And, Mr. McCulloch, would you concede they have been delivered to you and you have copies of them?

MR. MC CULLOCH: Books and records have been submitted to the board, yes.

JUDGE LIPTON: You don't have to have any colloquy with counsel. Anything you have, address the bench.

He doesn't have to testify or admit to anything unless I ask him.

Q Would you tell me --

MR. TURCHIN: Will your Honor take judicial notice of the excluded employees set forth in the settlement agreement without my going into detail after that, sir.

JUDGE LIPTON: Mr. Turchin, there is a unit description there. It is in evidence. Of course, anything that is material on the subject matter, if there is something you want me to take particular notice of, mention it in your brief.

MR. WEINMANN: Objection, your Honor.

JUDGE LIPTON: It is sustained.

MR. TURCHIN: I respectfully refer your Honor to the stipulation agreed to by counsel.

JUDGE LIPTON: Then you didn't need to ask this question at all, did you?

MR. TURCHIN: I wanted it as part of the sequence, as a background, your Honor.

Q Now, did you have a meeting with the union after July 10, 1975?

A No, I did not.

Q Did you receive a communication from the union after July 10, 1975?

A Just a phone call.

Q I show you notice of contention to conduct arbitration. Did you receive that by mail?

A Yes, sir.

Q Was that from Local 1034?

A It was.

MR. TURCHIN: At this time I offer in evidence Respondents' Exhibit No. 3 for Identification.

JUDGE LIPTON: It is already identified, it's been offerred and rejected and it remains rejected.

MR. TURCHIN: May I lay a foundation, sir?

JUDGE LIPTON: You have already gone through this

(Handing)

JUDGE LIPTON: Number one, just because this witness or anybody who looked through these papers, you can bring in the Clerk of the Court who read them, it doesn't mean they're properly identified and admissible.

You have various documents here, including affidavits.

Another question is the relevance. This is another processing and the way you have gone about this, this is a substantial document, I don't see any basis to sustain or support the purpose that you stated for the offer.

It is rejected.

MR. TURCHIN: At this time, your Honor, I ask your Honor to take judicial notice of a decision of Justice Helman in the Supreme Court, New York County in which Justice Helman stated --

JUDGE LIPTON: Don't read. Do you have a citation?

MR. TURCHIN: Yes, sir, I have a copy of --

JUDGE LIPTON: No, no, hold it. Just a citation.

MR. TURCHIN: 1288275.

JUDGE LIPTON: Is that the number of the case?

MR. TURCHIN: Yes.

JUDGE LIPTON: Is this a published decision?

MR. TURCHIN: This is a published decision in the New York Law Journal and this is the copy, sir.

JUDGE LIPTON: It is not published in any of the

reporting services?

MR. TURCHIN: I am not sure, sir, I don't know. I have the original decision here that I am --

JUDGE LIPTON: All right; have that marked.

(Respondents' Exhibit No. 4 marked for Identification, this date.)

JUDGE LIPTON: Off the record.

(Discussion off the record)

MR. WEINMANN: There was a motion of reargument made and another decision of Justice Helman and I think it is the final decision if any decision was to be offered, would be the appropriate one.

MR. TURCHIN: There was no decision that I know of, it was just a statement of motion for reargument denied.

I don't believe there is any other decision that is material or relevant. This is the decision I am asking your Honor to take judicial notice of. If Mr. Weinmann thinks there is something further, I am sure your Honor will take judicial notice of that.

JUDGE LIPTON: If you have a copy of a later decision and it has a number,cite it to me in the brief.

As to this, I still don't see the relevance and if it has relevance, I will take official notice of it but in the meantime it may go in the rejected exhibit file.

I will remove it in my decision and take official notice if I find it is relevant.

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(Respondents' Exhibit No. 4 marked for the Rejected Exhibit File, this date.)

Q Now, did you notify the union who in your employ were in the unit bargained for?

A I did.

Q And did you have this information called in to the union?

A I did.

Q And did you discuss this matter with anyone from the union?

A No, sir.

Q Now, what other areas had not been fully agreed upon between yourself and the union in the collective bargaining agreement?

MR. MC CULLOCH: Objection. Calls for a conclusion, your Honor.

JUDGE LIPTON: All right, at the point I am going to permit a description of the areas not agreed upon because to a certain extent that was allowed in the General Counsel's case and it does contain an element of a conclusion as to what constitutes agreement, but you may state what remained and you are testifying as a fact as not agreed upon from all of these proposals you have seen.

MR. TURCHIN: In view of your statement, possibly your Honor would want me to go into the specific areas.

JUDGE LIPTON: No, I would not. You ask the question and let the witness testify. What was not agreed upon.

A The number and the naming of the holidays in the contract.

Q When you say the number and naming of the holidays, what did they propose and what did you propose?

A They proposed 15 holidays. I proposed nine and I wanted them named.

Such as Christmas, New Years, Thanksgiving, etcetera. The question of severance pay, the rules and regulations that I wanted entered into the contract, the naming of the individuals involved in the contract and the excluding by name, thepeople that weren't included in the contract.

Q Was there any discussion as to extra pay for group leaders?

A Yes, there was and I refused to pay it.

I didn't think it was necessary.

JUDGE LIPTON: Do you recall now which meeting this took place concerning the group leaders?

THE WITNESS: April 28th.

JUDGE LIPTON: And you refused?

THE WITNESS: I refused and also the 30¢ --

JUDGE LIPTON: You refused the entire clause that was proposed?

THE WITNESS: The entire clause, right.

JUDGE LIPTON: And the other matters? Let's go down the line here.

THE WITNESS: Was the 30¢ deduction or the disability benefit, I believe it was.

JUDGE LIPTON: 30¢ deduction for disability. When did that take place?

THE WITNESS: At the April 28th meeting or April 29th meeting or whatever.

JUDGE LIPTON: What did you say?

THE WITNESS: I refused to pay it.

JUDGE LIPTON: You stated you refused to pay it.

THE WITNESS: It's been my practice that I have always deducted from the employees' wages in the past.

JUDGE LIPTON: Is that what you told him?

THE WITNESS: Yes, sir.

JUDGE LIPTON: How about the rules and regulations?

THE WITNESS: I thought I mentioned that, didn't I?

JUDGE LIPTON: Yes, but when did you last discuss that in the negotiations?

THE WITNESS: In the negotiations? When I saw the Adelsteins on June the 3rd, I presented them with a copy of the rules and regulations. They read it briefly, Mr. Martin Adelstein read it briefly also, Mr. Weinmann was present there at the latter part of that meeting and said they wanted to change some of the language I had in the

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rules and regulations and they would get back to me with the changes they wanted to make.

Never did. Nor did they submit any changes they wanted to make.

JUDGE LIPTON: You never saw any changes?

THE WITNESS: No, sir, I left the copy of the rules and regulations with them.

JUDGE LIPTON: How about severance pay, when was that discussed?

THE WITNESS: The April 28th meeting.

JUDGE LIPTON: What did you say?

THE WITNESS: I made them an offer.

JUDGE LIPTON: What was your offer?

THE WITNESS: I believe it was one, two and three dollars and they said they would get back to me.

JUDGE LIPTON: And did they?

THE WITNESS: No, sir.

JUDGE LIPTON: There was no further discussion of that at any time?

THE WITNESS: No, sir.

JUDGE LIPTON: Now, concerning the holidays, when was that last discussed?

THE WITNESS: April 28th.

JUDGE LIPTON: What did you say?

THE WITNESS: I told them that I wanted the holidays

named and numbered.

JUDGE LIPTON: All right.

THE WITNESS: And they said that they didn't have a past practice of doing that because in case I didn't want to give a particular person Christmas off, I wanted to give him another day off, that I would have that option. I said I wanted them named and numbered. If a person is going to be off on Christmas, he'll be off on Christmas.

JUDGE LIPTON: What was finally said on the matter?

THE WITNESS: Nothing. They didn't come back with an offer.

JUDGE LIPTON: And this was the last discussion of the matter?

THE WITNESS: With regards to that, yes, sir.

JUDGE LIPTON: When was the matter of the naming of employees included and excluded discussed?

THE WITNESS: That was done on the meeting of July 10th when I brought my payroll book up to Mr. Adelstein's office.

JUDGE LIPTON: What did you say? You wanted them named?

THE WITNESS: Yes.

JUDGE LIPTON: What did the union say?

THE WITNESS: He said don't worry about it, just sign the contract and we will settle it later on. When I

refused to sign the contract under his conditions, he said then we will take it to the arbitration board.

JUDGE LIPTON: Who said that?

THE WITNESS: Mr. Adelstein.

JUDGE LIPTON: Bernard?

THE WITNESS: Bernard.

JUDGE LIPTON: All right, Mr. Turchin.

Q Did you ever tell Mr. Fleicher that you had agreed to the contract and that you simply wanted to show it to your father, but your father was out of the country?

A No, sir.

Q During April and May, was your father ever out of the country?

A No, sir.

Q Where was your father during that period?

A Right here in New York.

Q And was he working for you?

A Yes, he works with us in an advisory capacity.

Q But he was available?

A Every day.

Q And he was in the offices of Ortiz?

A Every day.

Q Did you at any time ever consent to signing an agreement without there being a conclusion or a listing of the actual employees who were covered by that agreement?

A No, sir.

Q And did you raise this issue with the union at the collective bargaining negotiations?

A Yes, I did.

JUDGE LIPTON: Now, you are leading the witness. It's already been testified in specific terms and if you want to have wrap-up questions, you take it at your own risk. I am not going to give it much weight and it is leading.

MR. TURCHIN: I have no further questions.

JUDGE LIPTON: All right, Mr. McCulloch.

CROSS EXAMINATION

Q (By Mr. McCulloch) Mr. Ortiz, in 1975, did you have a car stolen?

A Yes, I did.

Q When did that happen?

A That happened in the month of June, about the middle part of the month. It was reported to the 43rd Precinct in the Bronx. I can get the docket number of your if you want.

Q Did you lose certain items in that --

A I did.

Q Did you lose the contracts that the union had given you?

A I lost some copies of that and some notes I had.

Q Did you call up the union then and ask for replacement copies?

A Yes, I did.

Q Who brought the copies to you?

A Mr. Fleicher.

Q About when did that happen?

A It must have been in the latter part of the month of June. Because I believe my car was stolen on the 16th. Somewhere in that week and I think he came in the latter part of the month when I called him.

Q Did he stay long?

A About a half-hour. We went into one of the chapels and sat down and spoke.

Q What did you talk about?

A He asked me how things were going. I said slow. He spoke about business. He asked me when I was going to sign the contract and I told him when they would give me a list of the employees that they had covered.

He told me why don't you go ahead and sign it and work that out later on and I said no.

Q Do you remember receiving that letter, the letter marked General Counsel's Exhibit No. 5?

A I do.

Q Did you respond by mail to the union, to that letter?

A By mail? I don't believe I did. I don't remember offhand.

Q Did you testify that you called the union?

A When?

Q After you received that letter.

A I spoke to them many times after I saw this letter. To set up other appointments. Mr. Fleicher called me several times.

Q Did you talk to them about that letter?

A No, sir. Other than when I went down to see them on May 27th when they had scheduled an appointment with Mr. Adelstein and myself to see if we could iron out the matters that were still open.

Q Have you ever seen that before (handing)

JUDGE LIPTON: Is this already in evidence?

MR. MC CULLOCH: No, it is not, your Honor.

JUDGE LIPTON: Have it marked.

MR. MC CULLOCH: I'd like to have this marked for identification as General Counsel Exhibit No. 8.

(General Counsel Exhibit No. 8 marked for Identification, this date.)

A I don't remember this letter offhand, no.

Q When mail is received in your office, is it opened by yourself?

A If it is addressed to me, yes, it is.

Q Is it your testimony that you are not sure that you ever saw this before?

A I am not sure.

Q Do you remember speaking to Mr. Weinmann at the latter

and returned?

THE WITNESS: No, sir.

JUDGE LIPTON: All right.

Q I show you General Counsel Exhibit No. 4, I show you Page 8, provision 15. When did you discuss that provision?

JUDGE LIPTON: What provision is that?

MR. MC CULLOCH: The bereavement provision, your Honor.

A At the first or the second meeting.

Q So that would be either April 10th or April 28th?

A That's right.

Q What did you say about that provision?

A I told him that I didn't want that provision in the contract and I told him why I didn't want it in the contract. Because Ponce's contract didn't have it in there.

Q So they showed you Ponce's contract?

A They didn't show me, Ponce showed me the contract.

Q So you had seen it before July 10th?

A Yes.

Q And before April 28th?

A Yes.

JUDGE LIPTON: What you are testifying is, you didn't want it in the contract --

THE WITNESS: I didn't want it in the contract because when we started our negotiations, Mr. Fleicher said

I would have a contract similar to Ponce.

JUDGE LIPTON: The question is, what did you say?

THE WITNESS: I don't want the bereavement clause in my contract.

JUDGE LIPTON: Is that all you said?

THE WITNESS: That's right.

Q What did the union say?

A They didn't say anything.

Q They sat there quietly?

A Very quietly. I mean, you know, it is common sense.

Q Just answer my question.

A I am sorry.

Q I show you provision 7 on seniority in General Counsel's Exhibit No. 4.

Did you discuss that?

A Which provision?

Q Well, it is a huge provision there. There are all kinds of subsections.

A I am sorry, I thought you referred to one in particular, excuse me.

Q Did you discuss that broadly?

A We went over it.

Q What did you say about it?

A The whole provision?

Q Yes.

JUDGE LIPTON: You are going to have to direct yourself more specifically to what you are trying to establish here. There was no mention of a seniority clause being in dispute.

Q Did you suggest a provision for part timers in seniority?

MR. TURCHIN: Objection.

JUDGE LIPTON: What is the objection?

MR. TURCHIN: It is new material, your Honor. It was not gone into in direct or on the direct case of General Counsel.

JUDGE LIPTON: I will not restrict this just on the scope, if there is a purpose here. Now, you are getting into another subject matter.

MR. MC CULLOCH: Your Honor, I withdraw the question.

Q Now, is it your testimony that on April 28th when you raised objections to various provisions of the contract, what was your testimony as to the union's reply?

JUDGE LIPTON: Well, what his testimony is, is already in the record. You can ask him on April the 28th what objections he raised.

Q Mr. Ortiz, after you received the May 1st letter which is marked as General Counsel's Exhibit No. 5, what did you do about that letter?

A What do you mean what did I do about the letter?

MR. TURCHIN: Your Honor, we have gone over this at least twice already in my direct and cross examination.

JUDGE LIPTON: It is overruled. What did you do?

THE WITNESS: I didn't do anything about the letter. I received the letter, I went over the contract that they sent me in the mail with the letter, I called the union up and I says, your copy of this contract doesn't include any of the changes we spoke about.

JUDGE LIPTON: Who did you speak to, Bernard?

THE WITNESS: No, I think I spoke to a secretary and in turn I called back another day and spoke to Mr. Adelstein.

JUDGE LIPTON: Hold it a moment, you are running on. One time you called and spoke to a secretary.

THE WITNESS: One time I believe I spoke to a secretary.

JUDGE LIPTON: You believe?

THE WITNESS: She must have been a secretary or a telephone operator.

JUDGE LIPTON: What did you say?

THE WITNESS: I called to speak to Mr. Adelstein.

JUDGE LIPTON: And you finally spoke to him?

THE WITNESS: Not the first time I called. I called a second time and I reached him and I spoke to him.

JUDGE LIPTON: What did you say?

THE WITNESS: I said to him that the copy of the

contract they sent me now in the mail doesn't include any of the changes we spoke about and once again no list of the employees I was promised.

So he asked me to come up to his office to talk about it.

JUDGE LIPTON: Mr. McCulloch, continue.

MR. MC CULLOCH: Who promised you a list of employees?

THE WITNESS: Mr. Fleicher did at the first meeting. I asked him for a list of the employees they had covered, that they had cards signed by. A list of the employees covered in the unit.

Q Which meeting was that?

A Very first meeting.

Q What date was that?

A April the 10th, I believe it was.

Q Did you have a meeeting before that with the union?

A April the 10th? No, I don't believe so. No, that was the first meeting, April the 10th.

Q Don't you remember a meeting on April 4th?

A April the 4th? Not to my recollection, no.

Q Don't you remember a meeting where employees who had been on strike and who were being reassigned to work, came in and spoke about their job assignments to you?

A But that had nothing to do with the contract.

Q Did you ask Mr. Fleicher at that meeting for a list of

names of employees?

A No, I didn't because they were -- you see --

MR. TURCHIN: That is it.

MR. MC CULLOCH: Answer the question.

JUDGE LIPTON: It is improper for you to make any motion or gesture.

MR. TURCHIN: Will you direct the witness, your Honor, just to answer the questions.

JUDGE LIPTON: The witness has already been instructed about this. You may continue your answer.

A The meeting you are referring to had nothing to do with the contract. The meeting you are referring to had to do with the placement of the strikers into their former or equivalent places where they were working because they wouldn't come back to work. That is why Mr. Adelstein came in to one of those meetings, also to try to iron it out. But there was nothing said about the contract at that time.

JUDGE LIPTON: You do remember that meeting?

THE WITNESS: Yes, I do.

JUDGE LIPTON: April 4th?

THE WITNESS: It may have been April 4th, it might have been April 3rd, I don't remember. It was right after the settlement agreement was signed.

JUDGE LIPTON: All right, Mr. McCulloch.

Q Why did you need the names from the union?

CSA Reporting

JUDGE LIPTON: I am not going to get into shys and wherefores at this stage and mental operations, post facto.

MR. TURCHIN: I have no objection.

JUDGE LIPTON: That is quite all right. I don't want to get into it. He has already testified and we are not going to rehash that about cost.

Q Mr. Ortiz, did you ever, during negotiation in April or after, advise Mike Fleicher that your father was away and that you had to consult him about the contract negotiations?

A No, I did not.

MR. McCULLOCH: Your Honor, at this time I have no further questions.

The General Counsel does not.

JUDGE LIPTON: Any redirect?

MR. TURCHIN: Just a few.

JUDGE LIPTON: Go ahead.

REDIRECT EXAMINATION

Q (By Mr. Turchin) Would you tell me what happened to your business from the time the strike took place to the time the negotiations ended?

MR. MC CULLOCH: Objection.

JUDGE LIPTON: I will sustain the objection.

MR. TURCHIN: Sir, they asked that question on

Form NLRB-4775
(6-71)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BO
D
OFFICIAL EXHIBIT GC 2h

In the Matter of

ORTIZ FUNERAL HOME CORP.
AND
LOCAL 1034, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA
CASE NO. 2-CA-13540

SETTLEMENT AGREEMENT

Identified
Witness
Reporter

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for a period of at least 60 consecutive days from the date of posting, copies of the Notice attached hereto and made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY — The Charged Party will make whole the employees named below by payment to each of them of the amount set opposite his or her name.

(Less Statutory Deductions)

Jose Roman	$570.00
Pedro Serrano	1,000.00
Jose Perez	355.00
Luis Ayala	1,050.00
Ciro Rofes	940.00
Domingo Vargas	420.00
Jose Ortiz	355.00
Jose Ruiz	1,110.00

The signing of this agreement by the Company shall not be deemed to constitute an admission that it has violated the National Labor Relations Act.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging Party fails or refuses to become a party to this Agreement, then if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 10 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case.

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

ORTIZ FUNERAL HOME CORP.
(Charged Party)

By: Herbert C. Ortizpes
(Name and Title)

Date: March 21, 1975

Recommended: 3/21/75
(Date)

By: Joel Spual
Board Agent

LOCAL 1034,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA
(Charging Party)

By: Michael Flaks Business Agent
(Name and Title)

Date: March 21, 1975

Approved: 7 APR 1975
(Date)

By: Sidney Dunchis
Regional Director
National Labor Relations Board

G P O 888-000

BEST COPY AVAILABLE

FORM NLRB-4722
(10-70)

NOTICE TO EMPLOYEES

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POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT interrogate our employees about their activity for or membership in Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT discourage membership in Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, or discourage employees from engaging in protected concerted activity by threatening or discharging any of our employees, or in any like or related manner discriminating in regard to hire or tenure of employment, or any other terms or conditions of employment.

WE WILL make Jose Roman, Pedro Serrano, Jose Perez, Luis Ayala, Ciro Rofes, Domingo Vargas, Jose Ortiz and Jose Ruiz, whole for any loss of pay suffered as a result of the alleged discrimination against them.

WE WILL reinstate Jose Roman, Pedro Serrano, Jose Perez, Ciro Rofes, Domingo Vargas, Jose Ortiz, and Jose Ruiz to their former or substantially equivalent positions.

Luis Ayala will not return to his former position and will not accept an offer thereof.

WE WILL recognize and bargain collectively with Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the unit including attendants, floorpeople, receptionists, interpreters and porters but excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the Act with respect to wages, hours and other terms and conditions of employment, and execute a written agreement with the Union incorporating any agreement reached.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing,, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

ORTIZ FUNERAL HOME CORP.

Dated:_____ By_____
Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.

26 Federal Plaza, Room 3614, New York, N. Y. Tel. 264-0360

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

ORTIZ FUNERAL HOME CORP.

and

LOCAL 1034 IBT

Period: March 22, 1975 through March 21, 1978

Covering: Attendants, Floor People, Receptionists, Interpreters and Porters

NATIONAL LABOR
CASE No. OFF
GC 3
1/28/76 WITNESS REPORTER
No. Pages

EXHIBIT A

AGREEMENT made as of the 29th day of April 1975 by and between LOCAL 1034 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSMEN AND HELPERS OF AMERICA, hereinafter called "Union", and ORTIZ FUNERAL HOME CORP., hereinafter called "Employer".

W I T N E S S E T H :

WHEREAS, the Union was recognized as the collective bargaining representative for the employees covered hereby by stipulation dated April 18, 1975

and

WHEREAS, the parties have met and negotiated the terms and conditions of a collective bargaining agreement, and

WHEREAS, the parties desire to establish and maintain a peaceful and harmonious relationship for their mutual benefit and for the benefit of the employees covered hereby;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining representative of all attendants, floor people, receptionists, interpreters and porters employed by the Employer within the State of New York, Nassau and Westchester County with respect to wages, hours and other working conditions. Excluded from the coverage of this Agreement are licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchman and supervisors as defined in the Labor Management Relations Act of 1947, as amended, hereinafter referred to as the "Act."

2. UNION SECURITY

(a) It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the execution or effective date of this Agreement, whichever is the later shall, in strict accordance with the applicable provisions of the Labor Management Relations Act of 1947, as amended, remain members in good standing, and those who are not members on such date shall, on the 30th day following such date, become and remain members in good standing of the Union. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its execution or effective date, whichever is the later, shall on the 30th day following the beginning of such employment become and remain members in good standing in the Union.

(b) Upon written notice by the Union that any employee has failed to become or remain a member in good standing as required above, the Employer shall suspend such employee for a 24 hour period to afford the employee the opportunity to obtain or regain good standing, failing which, said employee will be discharged forthwith.

(c) In the event of any change in the law during the term of this Agreement, the Employer agrees that the Union will be entitled to the maximum Union security which may be lawfully permissible.

(d) The representative of the Union, on notice to the Employer, shall have access to and shall be admitted to the Employer's place or places of business for the transaction of Union business to ascertain if the provisions of this Agreement are being complied with, to adjust disputes, investigate working conditions and perform such duties as his position with the Union may require, so long as the same does not interfere with the normal course of business.

3. CHECK-OFF

(a) On the first weekly pay day of each month, the Employer, if authorized by each employee by written assignment, will deduct from his wages a sum equal to such employee's dues and/or initiation fee and/or uniform assessments owed the Union and remit the same to the Union or its duly authorized representatives not later than the 10th day of the month in which deducted. In the event there shall be no earnings or wages due on the first weekly pay day of each month, the Employer shall deduct from the first wages due thereafter the dues and/or initiation fees and/or uniform assessments so owed and to be turned over to the Union within one week from the time such deductions are made. It is understood that this provision is subject to the laws and requirements of the Act. The Employer shall give immediate notice to the Union in writing when a check-off is revoked by an employee.

(b) Should the Employer fail to deduct from the wages of employees the monthly dues and/or initiation fees and/or uniform assessments pursuant to authorization submitted, the Employer shall, nevertheless, be liable to the Union for the amount thereof on the dates the same become due after forty-eight (48) hours notice by the Union. This shall not constitute a waiver of the right of the Employer to collect or recover such monies from the employee.

4. WORK WEEK - HOURS OF WORK

(a) The work week for covered employee shall consist of forty (40) hours within five (5) consecutive days of eight (8) hours each, exclusive of a one-half hour meal period, with two (2) specified days of rest in each work week. No employee shall be scheduled to work a split shift on any day. The total number of employees who may be scheduled to work less than a forty (40) hour work week shall not exceed twenty per cent (20%) of the total number of employees covered hereby.

(b) The right to schedule working hours and working days of all employees remains at the sole discretion of the Employer provided, however, that employees shall work regularly assigned shifts which shall be posted in advance and which shall not be changed upon less than one (1) week's notice. In the event the Employer changes the regularly assigned shift hours of an employee to new shift hours and the employee whose shift hours are changed objects, such new shift hours shall then be offered to the most senior employee at the location involved and employees shall have the right to accept or reject such permanent shift change in order of seniority; however, the most junior employee shall be required to accept such shift change if all employees senior to him refuse such assignment.

(c) Time worked by an employee before his regularly scheduled starting time or after eight (8) hours per day or forty (40) hours per week shall be paid for at the rate of one and one-half the employee's straight time hourly rate provided, however, there shall be no pyramiding of overtime. Employees who work through their meal time at the Employer's request shall be paid time and one-half for said time.

(d) Employees required to work on a sixth day in the week shall receive time and one-half their regular hourly rate. Employees required to work on the seventh day of their regular work week shall be paid two (2) times their regular hourly rate for such time worked.

5. WAGES

(a) Across-the-Board Increases - See Appendix A

(b) Minimum Wages - See Appendices A and B

(c) Any employee receiving a wage higher than the minimum wage scale herein contained shall maintain his differential in pay as heretofore.

(d) All wages, benefits and conditions previously paid or granted or hereafter paid or granted by the Employer which are more beneficial than those provided herein shall not be reduced or taken away during the full term of this Agreement.

6. GENERAL PROVISIONS

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(a) No employee covered hereby shall be required to perform any act or acts or any function that is or may be in violation of any Municipal or State Law, City ordinance or regulation provided, however, that no employee shall refuse to perform as directed by the Employer and that any issue raised hereby shall be submitted to the grievance, and arbitration machinery provided herein.

(b) Employees of other Funeral Directors shall be allowed to work within the Employer's establishments without interference by any employee covered hereby, provided employees covered by this Agreement are not thereby deprived of work opportunities.

(d) All employees shall receive the following advance notice of changes in schedule:

One (1) week notice for change of schedule which lasts for more than two (2) weeks;

Two (2) weeks notice for holiday schedule;

Four (4) weeks notice for vacation schedule.

(e) The Employer shall not enter into any individual contracts or agreements of any kind with any employee which shall in any manner or form change or attempt to change, modify or nullify any of the terms and conditions of this Agreement, any such agreement, if made, orally or otherwise, shall be void and of no force and effect.

(f) The Employer shall not require nor accept any security of any kind from any employee.

(g) Employees who have been off from work due to illness or injury shall be permitted to return to work upon the presentation to the Employer of a certificate from the employee's physician attesting to the employee's physical fitness.

(h) Any employee required to appear and attend a compensation case hearing during working hours shall be paid the full day's pay by his Employer, plus the cost of reasonable public conveyance.

(i) In the event any employee is injured while at work, immediate medical attention will be supplied by the Employer. Employees who are injured during working hours shall be paid for the entire day providing the injuries require medical examination and treatment and provided he cannot return to work because of the injury. If a worker leaves the job for medical attention for any on-the-job injury on the day of the injury and returns the same day, he shall be paid for a full day's work. If the employee is unable to return to work, he shall be paid for a full day's work, upon verification by a physician or hospital.

(j) All accidents, regardless of how minor, must be reported to the Employer immediately.

(k) The Employer reserves the right to require an employee to submit to a medical examination by its doctor at its expense.

7. SENIORITY

(a) There shall be separate seniority lists for the classifications of employees covered by this Agreement. Seniority lists shall be posted and, on the request of the Union, a list setting forth the name of each employee, his date of hire, his seniority within the classification and rate of pay will be sent to the Union and the Shop Steward within 5 days after requested. If the Employer has more than one (1) place of business, company-wide seniority shall prevail for lay-off and recall, within each classification. Classifications shall be (1) Interpreters and Receptionists and (2) Maintenance Employees and Porters.

(b) In the event of the merger of an establishment with the Employer, the seniority rights of the employees of the merged companies shall be dovetailed in accordance with company-wide seniority and each employee's seniority shall date from his original employment with either company, within each classification.

(c) In the event of the acquisition of a new establishment, employees of the acquired company shall be placed at the bottom of the seniority list, within each classification, but shall retain their original seniority for the purposes of vacation only.

(d) Seniority by establishment shall prevail for vacation selections and overtime assignments, wherever possible.

(e) New employees shall have a probationary period of thirty (30) days during which the Employer may at its sole discretion terminate any such probationary employee and same shall not be subject to grievance or arbitration.

(f) 1. The Employer shall notify the Union in writing immediately in cases of lay-off, discharge, when leaves of absence are granted, and when employees are recalled to work, giving the names of the employees, dates and other information regarding the same. The Employer shall give employees at least two week's prior notice in cases of lay-off.

2. All part-time employees must be laid off in order of their classification before any full-time employees may be laid off. However, before any full-time employee is laid off he will first be offered a part-time position if part-time work is available.

(g) No worker shall be assigned or reassigned for disciplinary purposes to any work other than that regularly performed by such employee.

(h) The Employer shall notify the Union immediately in writing by giving the name, address, social security number, date of hiring, classification and pay rate upon hiring of any new employee, and shall notify the Union in writing of the names of those employees who have completed their first thirty (30) days of employment, within one week after such completion.

(i) The Employer shall give immediate notice to the Union where an employee does not report to work because of illness, accident, or otherwise, for one week or more. This shall not constitute a grace period for unauthorized absence.

(j) Any employee desiring leave of absence from his employment must secure written permission from both the Union and Employer. Such leave of absence shall be for not more than six (6) months, but may be extended for periods of not more than thirty (30) days by mutual agreement of the Union and Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry in classifications covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority rights. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights. 159

(k) Any employee who is designated by the Union to work for the Union shall be granted a leave of absence with no loss of seniority for the duration of his employment with the Union.

(l) Seniority shall be deemed terminated:

1) When an employee resigns;

2) When an employee is discharged for just cause;

3) When an employee is not recalled to work within two (2) years after being laid off; and

4) When after a lay-off an employee fails to give the Employer notice that he will return to work within five (5) days after being notified to report to work and if after given such notice he fails to return to work within ten (10) work days after being notified to report to work.

8. HOLIDAYS

All employees shall receive fifteen (15) holidays off with pay in each calendar year, one of which shall be his birthday. If an employee's birthday shall fall on his regular weekly day off, the employee shall have an extra day off of his own choosing. If an employee's birthday shall fall during his vacation, the employee shall have an extra day of vacation.

9. VACATIONS

(a) Annual vacations with pay in advance shall be given by the Employer as follows:

Those employed	6 months to 1 year	1 week
"	1 year to 5 years	2 weeks
"	6 years	2 weeks plus 3 days
"	7 years	2 weeks plus 4 days
"	8 years	3 weeks
"	9 years	3 weeks plus 1 day
"	10 years	3 weeks plus 2 days
"	11 years	3 weeks plus 3 days
"	12 years	3 weeks plus 4 days
"	13 years or more	4 weeks

(b) All vacation schedules shall start on the first workday of each employee's workweek.

(c) The Employer shall give employees four (4) weeks' notice of their vacation. An employee shall be entitled to vacations during June, July, August or September provided that employees who desire to take a vacation during any other time of the year shall be allowed to do so upon agreement between the Employer and the Union. Vacations in excess of two (2) weeks shall not be consecutive unless agreed to by the Employer. Seniority by classification shall prevail when vacations are being picked.

(d) An employee who quits or is terminated prior to or during his vacation period shall receive at the time of his termination his full vacation if he has earned same, and if he has not earned a full vacation, then he shall be paid at the rate of one-twelfth for each month or major fraction of a month worked during his anniversary year. Employees shall give the Employer two (2) weeks notice before quitting.

(e) In the event of the death of an employee who is eligible for vacation, the full or pro-rata vacation pay of such an employee shall be paid to his widow, if any, or, if none, to his estate.

10. GRIEVANCE AND ARBITRATION

(a) Should any dispute or difference arise between the Employer and the Union, it shall be discussed between the Employer or his representative and an authorized representative of the Union in an effort to adjust the same. In the event that within two weeks after the commencement of such discussions, or by such other time as the parties agree, no settlement can be reached, the matter may be submitted to arbitration by an Arbitrator designated by the New York State Mediation Board. The parties hereby confer jurisdiction on the New York State Mediation Board for that purpose and do further confer jurisdiction to the Courts of the State of New York and further agree that the arbitration and all proceedings in connection therewith shall be in accordance with the arbitration laws of the State of New York. All notices required to institute, proceed with, and the conduct of the arbitration or any proceedings to enforce the award of the Arbitrator, may be served personally within or without the State of New York, or by certified mail to the last known address and shall have the same effect as if service was made personally within the State of New York. The decision of the Arbitrator shall be final and binding on the parties and enforceable in any court of competent jurisdiction.

(b) No Arbitrator shall have the power to change, add to, or subtract from the terms and conditions of this Agreement, but shall have the power only to interpret the language thereof. His fees shall be borne equally by the parties.

11. DISCHARGE - SUSPENSION - DISCIPLINE

(a) No employee shall be discharged, suspended or disciplined without just cause and without prior notice to the Union except in cases of theft of money, goods or merchandise during working hours, or being under the influence of liquor or drugs during working hours and on notice to the Union. If the Union representative does not take up the matter within 72 hours (Saturday, Sunday and holidays excepted), the Employer may take such action as it deems necessary. If the Union claims the discharge is not justified, it shall be submitted for arbitration in accordance with Section 10 hereof. If the Arbitrator finds such discharge, suspension or discipline was not justified, the employee may be reinstated with full pay for all time lost. If such action is found to be justified, the employee shall suffer such penalty without further recourse.

(b) An employee who is taken ill while working may not be discharged for any cause during his illness and convalescing period, provided that the employee forthwith shall submit a doctor's opinion that he will be available to resume his duties within six (6) months, and his substitute shall be told by the Employer at the time of hiring that his employment is only temporary. The sick employee, when physically fit to resume his duties, shall be restored to his former position with all the same rights and benefits he enjoyed before he was taken ill. This shall not apply to employees who become totally disabled and who may, therefore, be permanently replaced. In case of serious illness or accident, the Employer reserves the right to have the employee examined by a company physician at its own expense before permitting an employee to resume work.

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12. MILITARY SERVICE

(a) The standing of any employee shall not be prejudiced by service in the Armed Forces of the United States Government, and any employee shall regain his former position and seniority, if physically fit upon his return, replacing his substitute, notwithstanding his basence from employment due to military service within the Armed Forces of the United States.

(b) The foregoing applies only if the employee seeks his former position within a ninety (90) day period after his honorable discharge from the Armed Forces of the United States.

13. SHOP STEWARDS

(a) The Employer recognizes the right of the Union to designate Shop Stewards and alternates. The Union reserves the right to remove the Steward at any time. One of the employees employed by the Employer shall be designated as Shop Steward; there shall be an alternate Shop Steward where required.

(b) The authority of Shop Stewards and alternates so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

(1) The investigation and presentation of grievances in accordance with the provisions of the Collective Bargaining Agreement;

(2) The collection of dues when authorized by appropriate Local Union action;

(3) The transmission of such messages and information which shall originate with, and are authorized by the Local Union.

(c) Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business, except as authorized by official action of the Union.

(d) The Employer recognizes these limitations upon the authority of Shop Stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the Shop Steward has taken unauthorized strike action, slow-down, or work stoppage in violation of this Agreement.

(e) In case of lay-off, the Shop Steward shall be the last to be laid off. Shop Stewards and alternates shall not be discriminated against by reason of the position they hold. No employee, Shop Steward, alternate, or group of employees shall have the right to modify or waive any of the provisions of this Agreement or settle any dispute with the Employer.

(f) Any Shop Steward or alternate (but not both) required to appear in Court, or at the National Labor Relations Board, or New York State Labor Relations Board, or at any arbitration proceedings in any matter affecting this Agreement, shall be paid only for the straight time hours he would have worked in any such day.

14. GENERAL LEADER

The Employer shall appoint, after the recommendation of the Union, one of the employees covered by this Agreement as General Leader who shall be paid 25¢ per hour above his then rate of pay. He may be removed at any time and replaced by another in the manner hereinabove provided. Upon such removal he shall thereupon be reclassified to the position he held before such appointment but shall not be reduced in pay by more than 25¢ per hour. When a General Leader is absent, another employee shall be designated to act as such and shall also be paid 25¢ per hour above his rate of pay during the time he so acts. No more than one employee shall receive General Leader's compensation at any one time.

15. NO DISCRIMINATION

Neither the Employer nor the Union shall discriminate against any employee or applicant for employment by reason of race, nationality, creed, age, sex, Union membership or non-membership or Union activities (other than as provided in Section 2 hereof).

16. SEPARABILITY

(a) In the event any Section hereof shall be held to be invalid by any court or tribunal of competent jurisdiction, or the compliance with or enforcement of any Section should be restrained by such court or tribunal, the remainder of this Agreement and of any rider hereto shall not be affected thereby.

(b) In the event that any Section hereof is held invalid, or its enforcement or compliance restrained, the parties shall enter into immediate negotiations, upon the request of either party, for the purpose of arriving at a mutually satisfactory replacement for such Section.

17. WELFARE PLAN

(a) Commencing with the dates indicated below, the Employer shall contribute to the Insurance Trust Fund Local 1034 for each employee scheduled to work twenty (20) hours or more as follows:

Effective	May 1, 1975 ----------	$17.00 per week
Effective	March 22, 1976 ----------	$18.00 per week
Effective	March 22, 1977 ----------	$19.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Insurance Trust Fund for the purpose of providing to covered eligible employees group life insurance, Major Medical Plan, accidental death and dismemberment benefits, hospitalization, surgical, and other benefits for such members and their families under such rules, regulations and conditions as may be established by the Trustees of said Insurance Trust Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Insurance Trust Fund, earnings shall include wages paid in any week and during vacation periods.

(c) The Employer shall provide for each employee covered by the Agreement statutory disability benefits as required by State law; the Employer to pay the full cost thereof without any contributions or deductions by the employees.

18. MANDATORY LEGISLATION

In the event that mandatory legislation is enacted resulting in additional costs to the Insurance Trust Fund for maintenance of the currently existing benefits or new benefits required by such legislation, or to fulfil other obligations imposed by such legislation and, further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional costs.

19. SEVERANCE PLAN

(a) Effective May 1, 1975, the Employer shall contribute to the Local 813 and Local 1034 Severance and Retirement Trust Fund for each employee scheduled to work twenty (20) hours or more as follows:

Effective May 1, 1975 ---------- $3.00 per week

Effective March 22, 1976---------- $4.00 per week

Effective March 22 1977---------- $5.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Severance Fund for the purpose of providing severance and retirement benefits to covered eligible employees under such rules, regulations and conditions as may be established by the Trustees of said Severance Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Severance Fund, earnings shall include wages paid in any week and during vacation periods.

(c) In the event that mandatory legislation is enacted resulting in additional costs to the Severance Fund for maintenance of the currently existing benefits or new benefits required by such legislation (including vesting requirements), or to fulfil other obligations imposed by such legislation, and further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional costs.

(d) If the Employer dispenses with the services of an employee for other than just cause, the Employer shall pay and the employee shall receive severance pay according to the following schedule:

After 3 to 5 years of service ---------- 1 week pay
After 5 to 7 years of service ---------- 3 weeks pay
After 7 to 9 years of service ---------- 4 weeks pay
After 9 to 10 years of service ---------- 5 weeks pay
After 10 to 15 years of service ---------- 6 weeks pay
Over 15 years of service ---------- 7 weeks pay

(e) In the event of the death of an employee who is eligible for severance pay, the severance pay due to such employee at the time of his death shall be paid to his widow or, if he has none, to his estate.

(f) As the parties hereto agree that the Local 813 and Local 1034 Severance and Retirement Trust Fund does not at this time commence payment of benefits to cover bargaining unit employees of the Employer until 54 months from the effective date of this Agreement, the Employer agrees to continue to provide the severance benefits delineated in paragraph (c) of this Article: provided however that when the Local 813 and Local 1034 Severance and Retirement Trust Fund becomes operative as to payment of benefits to a particular individual covered by the Fund under this contract, the obligation of the Employer contained in said paragraph (c) shall be completely eliminated as to such employee. The Employer shall, however, continue to provide one (1) week's severance pay for all employees severed after 3 but less than 5 years service.

20. METHOD OF PAYMENTS

Within the first seven (7) calendar days of June, 1975 the Employer shall submit a report and payment of the amount due each Fund during the month of May, 1975. Similarly, during the first seven (7) calendar days of each month thereafter, the Employer shall submit a report and payment for employees employed in the previous month.

21. DISPUTES CONCERNING PAYMENTS - SECURITY ON DEFAULT

(a) The Employer agrees that should there be any claim by the Union or any of the Trust Funds mentioned in this Agreement as to any discrepancies or disputes concerning the payments by the Employer to the respective Funds, that they or their representatives shall have the right on reasonable notice to examine the Employer's books concerning such discrepancies or disputes, including payroll book, hours of work records, or other records pertaining to the number of employees and/or the hours worked or paid for. There shall be no cessation for any reason whatsoever (no lapse of time) of payments provided to be made to any or all of the Trust Funds mentioned in this Agreement.

(b) In the event the Employer fails to make the aforesaid monthly Plan payments as above mentioned, in addition to paying up any amounts then due, the Employer shall also pay to the Union as security a sum equal to three (3) months Insurance, Pension and Severance contributions based on the greatest number of employees in the prior three (3) months, which security will be held by the Trustees of the respective Funds and used and applied as follows: In the event the Employer shall default in any payment of Insurance, Pension and Severance contributions, the same Trustees may apply any part, or all if necessary, of said security in payment of the items then unpaid, and if said security shall not be sufficient, the Employer shall nevertheless remain liable for the

...payment of the balance. In the event the security is applied in payment of any or all the items, the Employer shall within 72 hours after notice per ... to the said Trustees, the amount so applied, it being the intention of the parties that there shall be in the security deposit at all times the full amount, and failure by the Employer to do so shall be deemed a breach of this Agreement. The provisions herein regarding payment and security shall in no way limit, restrict or prevent the Union and/or Trustees from taking any other action or remedies or the Union to call a work stoppage because of such default. If there be no charges or claims owing from the Employer at the expiration of the contract, the security shall be returned together with bank interest earned, if any.

22. ADMINISTRATION OF THE PLANS

(a) To the extent and in the manner mentioned, the Employer joins with other employers in this or other industries having agreements with the Union who have made or may make agreements containing provisions similar to those herein set forth, in establishing and maintaining said Funds under such rules and regulations as may be established by the Trustees of said Funds, it being understood and agreed that the Employers shall be under no obligation to see to the application of the monies paid into said Funds pursuant to this paragraph for the purposes and uses thereof, but the said Funds will render reports at periodic intervals to the Employers respecting the application of the monies received and benefits paid.

(b) The said Insurance Trust Fund, ... and Severance and Retirement Trust Fund are each now being administered by Trustees, an equal number of whom have been appointed by Employers, and an equal number of whom have been appointed by the Union, and shall continue to be so administered. The Employer hereby authorizes the persons (or their successors or others chosen to act in their place and stead) presently designated and acting for the Employers as chosen by Employer associations, to act as Trustees of the Funds, to be the representatives of the Employer, with the same force and effect as if the Employer designated said persons individually and agrees further that any vacancy which occurs may be filled in like manner. Each of the groups having authority to appoint Trustees shall have the right at any time, with or without cause, to remove and replace any Trustee or Trustees so designated by or for them respectively, and to fill any vacancy or vacancies caused by death, resignation, or other cause, of any Trustee or Trustees so designated by or for them respectifely. The said Trustees are authorized to adopt such rules and mulations for the management and administration of the Funds, eligibility for and benefits to be paid as they deem proper and designate as officers of the Fund one or more of the Trustees to act for and on behalf of all the Trustees in any and all matters concerning the Funds. The Funds will be otherwise administered as provided in the Agreement and Declaration of Trust which is dated February 13, 1952 for the Insurance Trust Fund, the Agreement and Declaration of Trust dated September 18, 1962 for the Severance and Retirement Trust Fund, ... and any amendments or changes thereof now in effect or hereafter made, and have been entered into between the Union, the Trustees and various Employers. If said Agreements and Declarations of Trust have not been heretofore signed, the Employer hereby adopts said agreements and agrees to be bound thereby including any amendments thereto as if the same were incorporated at length as part of this Agreement; a copy of each of said agreements has been exhibited and delivered to the Employer herein mentioned.

(c) The money, property, or assets of the said Funds, or any of them or any part thereof, shall at no time be considered as that of the Union or any International or any Employer or Employers, but shall at all times belong to the said Funds and to be held and administered as provided by law and in the Agreements and Declarations of Trust.

(d) The Trustees of the respective Funds are hereby authorized and empowered to provide benefits under the Insurance and/or Severance and Retirement Trust Funds mentioned in this Agreement and for the employees of the respective Funds, for the officers and/or employees of the Unions contributing to any or all of the Funds, and for any employees of this or other employers who have agreements with the Union which provide for contributions to the Funds, or any of them, relating to such employees,

23. SUCCESSORS, ASSIGNS, SUB-CONTRACTING

(a) In the event the Employer sells or transfers all or any part of its business, or takes over by purchase or otherwise, the business of any person or firm, the Union shall be notified immediately, and the Employer shall also notify the purchaser or transferee of the existence of all the terms and conditions of this Agreement.

(b) The Employer agrees that except as provided in subsection (c) hereof, no work or services presently performed or hereafter assigned to employees in the collective bargaining unit will be sub-contracted, transferred, leased, assigned or conveyed in whole or in part to any other person, firm partnership, corporation or non-unit worker or workers. Before any change in the methods of operation of the Employer may be instituted or effectuated which might affect the wages, terms, conditions, employment, or otherwise, of any workers covered under this Agreement, it shall first be discussed with the Union, and no changes shall be made unless mutually agreed. Where any change would introduce new job classifications or new types of equipment or result in a reduction of employment opportunities to workers covered by this Agreement, it must first be mutually agreed. As used herein "mutually agreed" shall require actual agreement and not resolution of a disagreement through arbitration.

(c) This Agreement shall be binding upon and inure to the benefits of the parties, their successors, legal representatives and assigns. This Agreement shall be binding upon any person, firm or corporation whether as a successor to the Employer herein mentioned or not, and irrespective of whether the business is thereafter conducted in the same or a different name, if the purchaser or transferee is operating or conducting the same business or a part thereof, directly or indirectly, in whole or in part. In the event an Employer shall sell or otherwise terminate his business and thereafter (either individually or as a partner or as a member of any other firm or corporation) shall again start in this business employing persons in the bargaining unit herein described, he shall assume and be bound by the terms and provisions of this Agreement.

... the law as presently provided, the Employer shall continue to furnish and maintain adequate drinking rooms, lockers, toilets and wash facilities for the employees. Where the health or safety of any employee may be affected due to defects in working conditions, the Employer shall take immediate steps to correct the conditions.

25. JOB PROTECTION:

(a) If through an act of God, catastrophe or firm shut-down, the Employer shall arrange with some other person or firm to do the work normally performed by the employees in the bargaining unit, and if the latter employer needs additional help, the employees who are not working because of the aforesaid events shall be given first preference according to their company-wide seniority and, upon such employment, shall continue to be paid thewages and receive any other fringes and conditions they received at the first firm, but their seniority shall be placed after the employees working at the firm where they are hired. However, when the original Employer resumes operations, the employees shall be recalled by and retain the original company-wide seniority they had at the time the work was farmed out and be paid their regular wages plus any increases provided in the within contract.

(b) During the term of this Agreement, the Employer shall not directly or indirectly, through himself, or itself, or through any other firm, person, corporation, partnership or other entity, operate, maintain or conduct any establishment or place of business for the purpose of evading or which attempts or actually evades any of the terms of this Agreement.

(c) In the event any employee shall suffer loss of earning opportunity due to error or fault of the Employer because of any violation of this Agreement by the Employer or his representative, said employees shall be reimbursed in full.

26. BULLETIN BOARD

The Employer shall furnish a bulletin board at a conspicuous location in the Employer's place of business and shall permit representatives of the Union to post notices pertaining to Union affairs, etc., on the bulletin board. Notices shall avoid controversial issues and shall be shown to the Employer before posting.

27. WAGES AND EARNINGS TO BE PAID WEEKLY

Wages and earnings shall be paid weekly. Where the Employer pays by check, he shall make proper arrangements for the employees to cash the check at the Employer's bank during working hours or to provide other means of cashing the check without any cost to the employee. The Employer shall give each employee an itemized statement each week of all earnings and legal deductions.

28. PICKET LINES

It shall not be a violation of Agreement, and it shall not be cause for discharge or disciplinary action, in the event any employee refuses to go through any lawful primary picket line, including primary picket lines at any place or places of business. Nothing herein contained shall be construed to be a contract or agreement, express or implied, which in any manner violates any Federal or State law as presently enacted or as amended or interpreted during the term of the Agreement.

29. RULES AND REGULATIONS

Employees shall abide by and follow such reasonable rules and regulations as the Employer prescribes providing the same do not conflict with any of the provisions of this Agreement.

30. MANAGEMENT RIGHTS

The management of the Employer's business and the direction of operations are vested solely in the Employer.

31. EMPLOYER RECORDS

The Employer agrees to maintain an adequate record and system of timekeeping, payrolls and employees' records of service as well as records pertaining to employment rates and hours of pay, payment for insurance and other conditions provided for in this Agreement. All of the aforesaid records shall be made available to an authorized Union representative on demand, and he shall have the right to inspect the same. In the event an Employer is found by an Arbitrator to have violated this section, the Union may require installation and maintenance of a time clock.

32. TERM OF AGREEMENT

This Agreement constitutes full accord on all matters properly subject to collective bargaining and shall remain in effect without reopening of any kind from March 22, 1975, through March 21, 1978.

IT WITNESS WHEREOF, this Agreement has been duly executed by the parties the day and year first above written.

LOCAL 1034, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By_____
Martin Adelstein, Secretary-Treasurer

ORTIZ FUNERAL HOME CORP.

By_____

Title_____

APPENDIX "A"

ACROSS THE BOARD WAGE INCREASES

CLASSIFICATION	Eff. 3/22/75	Eff. 3/22/76	Eff. 3/22/77
Interpreters and Receptionists	$10	$10	$10
Maintenance Employees and Porters	10	10	10
Part Time Employees	25¢ per hr.	25¢ pr hr.	25¢ per hr

MINIMUM WAGES

	Effective 3-22-1975	Effective 3-22-1976	Effective 3-22-1977
A. Interpreters and Receptionists	$115	$125	$135
B. Maintenance Employees and Porters	115	125	135
C. Part Time Employees	$2.50 per hr.	$2.75 per hr.	$3.00 per hr

C. COST-OF-LIVING ALLOWANCE

All employees shall receive a cost-of-living allowance to be determined as provided below on the basis of the Consumer Price Index for Moderate Income Families for New York published by the Bureau of Labor Statistics (1957-1959=100) and referred to herein as the Index.

The first cost-of-living allowance shall be effective the first pay period beginning on or after March 22, 1976 based on the difference between the Index for January, 1975 and January, 1976. The second cost-of-living allowance shall be effective the first pay period beginning on or after March 22, 1977 based on the difference between the Index for January, 1976 and January, 1977.

Adjustment of the Cost-of-Living Allowance shall be made on the basis of 1¢ for every .3 point rise in the Index, with a minimum of 8¢ per hour per annum and a maximum of 11¢ per hour per annum.

APPENDIX B.

WAGE SCHEDULE

Name of Employee	Effective 3/22/1975	Effective 3/22/1976	Effective 3/22/1977
	$	$	$

NATIONAL LABOR RELATIONS BOARD
Docket No. 6-C-4
Date 1/28/76

PROPOSED
COLLECTIVE BARGAINING AGREEMENT

Between

ORTIZ FUNERAL HOME CORP.

and

LOCAL 1034 IBT

Period: ?

Covering: ~~Interpreters and~~ Receptionists
~~Maintenance Employees and Porters~~

AGREEMENT made as of the day of 1975 by and between LOCAL 1034 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSMEN AND HELPERS OF AMERICA, hereinafter called "Union", and ORTIZ FUNERAL HOME CORP., hereinafter called "Employer".

W I T N E S S E T H :

WHEREAS, the Union was recognized as the collective bargaining representative for the employees covered hereby by stipulation dated and

WHEREAS, the parties have met and negotiated the terms and conditions of a collective bargaining agreement, and

WHEREAS, the parties desire to establish and maintain a peaceful and harmonious relationship for their mutual benefit and for the benefit of the employees covered hereby;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. RECOGNITION - WILL READ AS NLRB RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining representative of all interpreters, receptionists, maintenance employees and porters employed by the Employer within the City of New York and Nassau and Westchester County, with respect to wages, hours and other working conditions. Excluded from the coverage of this Agreement are all other employees, executives, guards, watchmen and supervisors, as defined in the Labor Management Relations Act of 1947, as amended, hereinafter referred to as the Act.

2. UNION SECURITY

(a) It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the execution or effective date of this Agreement, whichever is the later shall, in strict accordance with the applicable provisions of the Labor Management Relations Act of 1947, as amended, remain members in good standing, and those who are not members on such date shall, on the 30th day following such date, become and remain members in good standing of the Union. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its execution or effective date, whichever is the later, shall on the 30th day following the beginning of such employment become and remain members in good standing in the Union.

(b) Upon written notice by the Union that any employee has failed to become or remain a member in good standing as required above, the Employer shall suspend such employee for a 24 hour period to afford the employee the opportunity to obtain or regain good standing, failing which, said employee will be discharged forthwith.

(c) In the event of any change in the law during the term of this Agreement, the Employer agrees that the Union will be entitled to the maximum Union security which may be lawfully permissible.

(d) The representative of the Union, on notice to the Employer, shall have access to and shall be admitted to the Employer's place or places of business for the transaction of Union business to ascertain if the provisions of this Agreement are being complied with, to adjust disputes, investigate working conditions and perform such duties as his position with the Union may require, so long as the same does not interfere with the normal course of business.

12-MONTHLY
100-[illegible]

3. CHECK-OFF

(a) On the first weekly pay day of each month, the Employer, if authorized by each employee by written assignment, will deduct from his wages a sum equal to such employee's dues and/or initiation fee and/or uniform assessments owed the Union and remit the same to the Union or its duly authorized representatives not later than the 10th day of the month in which deducted. In the event there shall be no earnings or wages due on the first weekly pay day of each month, the Employer shall deduct from the first wages due thereafter the dues and/or initiation fees and/or uniform assessments so owed and to be turned over to the Union within one week from the time such deductions are made. It is understood that this provision is subject to the laws and requirements of the Act. The Employer shall give immediate notice to the Union in writing when a check-off is revoked by an employee.

(b) Should the Employer fail to deduct from the wages of employees the monthly dues and/or initiation fees and/or uniform assessments pursuant to authorization submitted, the Employer shall, nevertheless, be liable to the Union for the amount thereof on the dates the same become due after forty-eight (48) hours notice by the Union. This shall not constitute a waiver of the right of the Employer to collect or recover such monies from the employee.

4. WORK WEEK - HOURS OF WORK

(a) The work week for covered employee shall consist of forty (40) hours within five (5) consecutive days of eight (8) hours each, exclusive of a one-half hour meal period, with two (2) specified days of rest in each work week. No employee shall be scheduled to work a split shift on any day. The total number of employees who may be scheduled to work less than a forty (40) hour work week shall not exceed twenty per cent (20%) of the total number of employees covered hereby.

(b) The right to schedule working hours and working days of all employees remains at the sole discretion of the Employer provided, however, that employees shall work regularly assigned shifts which shall be posted in advance and which shall not be changed upon less than one (1) week's notice. In the event the Employer changes the regularly assigned shift hours of an employee to new shift hours and the employee whose shift hours are changed objects, such new shift hours shall then be offered to the most senior employee at the location involved and employees shall have the right to accept or reject such permanent shift change in order of seniority; however, the most junior employee shall be required to accept such shift change if all employees senior to him refuse such assignment.

(c) Time worked by an employee before his regularly scheduled starting time or after eight (8) hours per day or forty (40) hours per week shall be paid for at the rate of one and one-half the employee's straight time hourly rate provided, however, there shall be no pyramiding of overtime. Employees who work through their meal time at the Employer's request shall be paid time and one-half for said time. Employees requested to work overtime shall be ~~guaranteed~~ not less than two (2) hours overtime. ?

(d) Employees required to work on a sixth day in the week shall receive time and one-half their regular hourly rate. Employees required to work on the seventh day of their regular work week shall be paid two (2) times their regular hourly rate for such time worked.

~~(e) Any licensee who at the request of the Employer, is called upon to hang their license shall receive an additional $25.00 per week for such service.~~

5. WAGES

(a) Across-the-Board Increases - See Appendix A

(b) Minimum Wages - See Appendices A and B

(c) Any employee receiving a wage higher than the minimum wage scale herein contained shall maintain his differential in pay as heretofore.

(d) All wages, benefits and conditions previously paid or granted or hereafter paid or granted by the Employer which are more beneficial than those provided herein shall not be reduced or taken away during the full term of this Agreement.

6. GENERAL PROVISIONS

(a) No employee covered hereby shall be required to perform any act or acts or any function that is or may be in violation of any Municipal or State Law, City ordinance or regulation provided, however, that no employee shall refuse to perform as directed by the Employer and that any issue raised hereby shall be submitted to the grievance, and arbitration machinery provided herein.

(b) Employees of other Funeral Directors shall be allowed to work within the Employer's establishments without interference by any employee covered hereby, provided employees covered by this Agreement are not thereby deprived of work opportunities.

(d) All employees shall receive the following advance notice of changes in schedule:

One (1) week notice for change of schedule which lasts for more than two (2) weeks;

Two (2) weeks notice for holiday schedule;

Four (4) weeks notice for vacation schedule.

(e) The Employer shall not enter into any individual contracts or agreements of any kind with any employee which shall in any manner or form change or attempt to change, modify or nullify any of the terms and conditions of this Agreement, any such agreement, if made, orally or otherwise, shall be void and of no force and effect.

(f) The Employer shall not require nor accept any security of any kind from any employee.

(g) Employees who have been off from work due to illness or injury shall be permitted to return to work upon the presentation to the Employer of a certificate from the employee's physician attesting to the employee's physical fitness.

(h) Any employee required to appear and attend a compensation case hearing shall be paid one day's pay by his Employer, plus the cost of reasonable public conveyance. DURING WORKING HOURS

(i) In the event any employee is injured while at work, immediate medical attention will be supplied by the Employer. Employees who are injured during working hours shall be paid for the entire day providing the injuries require medical examination and treatment and provided he cannot return to work because of the injury. If a worker leaves the job for medical attention for any on-the-job injury on the day of the injury and returns the same day, he shall be paid for a full day's work. If the employee is unable to return to work, he shall be paid for a full day's work, upon verification by a physician or hospital.

(j) All accidents, regardless of how minor, must be reported to the Employer immediately.

(k) The Employer reserves the right to require an employee to submit to a medical examination by its doctor at its expense.

7. SENIORITY

(a) There shall be separate seniority lists for the classifications of employees covered by this Agreement. Seniority lists shall be posted and, on the request of the Union, a list setting forth the name of each employee, his date of hire, his seniority within the classification and rate of pay will be sent to the Union and the Shop Steward within 5 days after requested. If the Employer has more than one (1) place of business, company-wide seniority shall prevail for lay-off and recall, within each classification. Classifications shall be (1) Interpreters and Receptionists and (2) Maintenance Employees and Porters.

(b) In the event of the merger of an establishment with the Employer, the seniority rights of the employees of the merged companies shall be dovetailed in accordance with company-wide seniority and each employee's seniority shall date from his original employment with either company, within each classification.

(c) In the event of the acquisition of a new establishment, employees of the acquired company shall be placed at the bottom of the seniority list, within each classification, but shall retain their original seniority for the purposes of vacation only.

(d) Seniority by establishment shall prevail for vacation selections and overtime assignments, wherever possible.

(e) New employees shall have a probationary period of thirty (30) days during which the Employer may at its sole discretion terminate any such probationary employee and same shall not be subject to grievance or arbitration.

(f) The Employer shall notify the Union in writing immediately in cases of lay-off, discharge, when leaves of absence are granted, and when employees are recalled to work, giving the names of the employees, dates and other information regarding the same.

LAY-OFF CLAUSE

(g) No worker shall be assigned or reassigned for disciplinary purposes to any work other than that regularly performed by such employee.

(h) The Employer shall notify the Union immediately in writing by giving the name, address, social security number, date of hiring, classification and pay rate upon hiring of any new employee, and shall notify the Union in writing of the names of those employees who have completed their first thirty (30) days of employment, within one week after such completion.

(i) The Employer shall give immediate notice to the Union where an employee does not report to work because of illness, accident, or otherwise, for one week or more. This shall not constitute a grace period for unauthorized absence.

(j) All part-time employees must be laid off in order of their seniority within their classification before any full-time employee may be laid off.

LIST OF PART-TIMERS?
JOB LIST ?

(j) Any employee desiring leave of absence from his employment must secure written permission from both the Union and Employer. Such leave of absence shall be for not more than six (6) months, but may be extended for periods of not more than thirty (30) days by mutual agreement of the Union and Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry in classifications covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority rights. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

(k) Any employee who is designated by the Union to work for the Union shall be granted a leave of absence with no loss of seniority for the duration of his employment with the Union.

PERMANENT POSITION

(l) Seniority shall be deemed terminated:

1) When an employee resigns;

2) When an employee is discharged for just cause;

3) When an employee is not recalled to work within two (2) years after being laid off; and

4) When after a lay-off an employee fails to give the Employer notice that he will return to work within five (5) days after being notified to report to work and if after given such notice he fails to return to work within ten (10) work days after being notified to report to work.

* 8. HOLIDAYS

All employees shall receive fifteen (15) holidays off with pay in each calendar year, one of which shall be his birthday. If an employee's birthday shall fall on his regular weekly day off, the employee shall have an extra day off of his own choosing. If an employee's birthday shall fall during his vacation, the employee shall have an extra day of vacation.

✓ 9. VACATIONS

(a) Annual vacations with pay in advance shall be given by the Employer as follows:

Those employed 6 months to 1 year	1 week
" " 1 year to 5 years	2 weeks
" " 6 years	2 weeks plus 3 days
" " 7 years	2 weeks plus 4 days
" " 8 years	3 weeks
" " 9 years	3 weeks plus 1 day
" " 10 years	3 weeks plus 2 days
" " 11 years	3 weeks plus 3 days
" " 12 years	3 weeks plus 4 days
" " 13 years or more	4 weeks

(b) All vacation schedules shall start on the first workday of each employee's workweek.

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(c) The Employer shall give employees four (4) weeks' notice of their vacation. An employee shall be entitled to vacations during June, July, August or September provided that employees who desire to take a vacation during any other time of the year shall be allowed to do so upon agreement between the Employer and the Union. Vacations in excess of two (2) weeks shall not be consecutive unless agreed to by the Employer. Seniority by classification shall prevail when vacations are being picked.

(d) An employee who quits or is terminated prior to or during his vacation period shall receive at the time of his termination his full vacation if he has earned same, and if he has not earned a full vacation, then he shall be paid at the rate of one-twelfth for each month or major fraction of a month worked during his anniversary year. Employees shall give the Employer two (2) weeks notice before quitting.

(e) In the event of the death of an employee who is eligible for vacation, the full or pro-rata vacation pay of such an employee shall be paid to his widow, if any, or, if none, to his estate.

10. GRIEVANCE AND ARBITRATION

(a) Should any dispute or difference arise between the Employer and the Union, it shall be discussed between the Employer or his representative and an authorized representative of the Union in an effort to adjust the same. In the event that within two weeks after the commencement of such discussions, or by such other time as the parties agree, no settlement can be reached, the matter may be submitted to arbitration by an Arbitrator designated by the New York State Mediation Board. The parties hereby confer jurisdiction on the New York State Mediation Board for that purpose and do further confer jurisdiction to the Courts of the State of New York and further agree that the arbitration and all proceedings in connection therewith shall be in accordance with the arbitration laws of the State of New York. All notices required to institute, proceed with, and the conduct of the arbitration or any proceedings to enforce the award of the Arbitrator, may be served personally within or without the State of New York, or by certified mail to the last known address and shall have the same effect as if service was made personally within the State of New York. The decision of the Arbitrator shall be final and binding on the parties and enforceable in any court of competent jurisdiction.

(b) No Arbitrator shall have the power to change, add to, or subtract from the terms and conditions of this Agreement, but shall have the power only to interpret the language thereof. His fees shall be borne equally by the parties.

11. DISCHARGE - SUSPENSION - DISCIPLINE

(a) No employee shall be discharged, suspended or disciplined without just cause and without prior notice to the Union except in cases of theft of money, goods or merchandise during working hours, or being under the influence of liquor or drugs during working hours and on notice to the Union. If the Union representative does not take up the matter within 72 hours (Saturday, Sunday and holidays excepted), the Employer may take such action as it deems necessary. If the Union claims the discharge is not justified, it shall be submitted for arbitration in accordance with Section 10 hereof. If the Arbitrator finds such discharge, suspension or discipline was not justified, the employee may be reinstated with full pay for all time lost. If such action is found to be justified, the employee shall suffer such penalty without further recourse.

(b) An employee who is taken ill while working may not be discharged for any cause during his illness and convalescing period, provided that the employee forthwith shall submit a doctor's opinion that he will be available to resume his duties within six (6) months, and his substitute shall be told by the Employer at the time of hiring that his employment is only temporary. The sick employee, when physically fit to resume his duties, shall be restored to his former position with all the same rights and benefits he enjoyed before he was taken ill. This shall not apply to employees who become totally disabled and who may, therefore, be permanently replaced. In case of serious illness or accident, the Employer reserves the right to have the employee examined by a company physician at its own expense before permitting an employee to resume work.

12. MILITARY SERVICE

(a) The standing of any employee shall not be prejudiced by service in the Armed Forces of the United States Government, and any employee shall regain his former position and seniority, if physically fit upon his return, replacing his substitute, notwithstanding his basence from employment due to military service within the Armed Forces of the United States.

(b) The foregoing applies only if the employee seeks his former position within a ninety (90) day period after his honorable discharge from the Armed Forces of the United States.

13. SHOP STEWARDS

(a) The Employer recognizes the right of the Union to designate Shop Stewards and alternates. The Union reserves the right to remove the Steward at any time. One of the employees employed by the Employer shall be designated as Shop Steward; there shall be an alternate Shop Steward where required.

(b) The authority of Shop Stewards and alternates so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

(1) The investigation and presentation of grievances in accordance with the provisions of the Collective Bargaining Agreement;

(2) ~~The collection of dues when authorized by appropriate Local Union action;~~

(3) The transmission of such messages and information which shall originate with, and are authorized by the Local Union.

(c) Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business, except as authorized by official action of the Union.

(d) The Employer recognizes these limitations upon the authority of Shop Stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the Shop Steward has taken unauthorized strike action, slow-down, or work stoppage in violation of this Agreement.

(e) In case of lay-off, the Shop Steward shall be the last to be laid off. Shop Stewards and alternates shall not be discriminated against by reason of the position they hold. No employee, Shop Steward, alternate, or group of employees shall have the right to modify or waive any of the provisions of this Agreement or settle any dispute with the Employer.

(f) Any Shop Steward or alternate (but not both) required to appear in Court, or at the National Labor Relations Board, or New York State Labor Relations Board, or at any arbitration proceedings in any matter affecting this Agreement, shall be paid only for the straight time hours he would have worked in any such day.

14. GENERAL LEADER (SHOP STEWARD)

The Employer shall appoint, after the recommendation of the Union, one of the employees covered by this Agreement as General Leader who shall be paid 25¢ per hour above his then rate of pay. He may be removed at any time and replaced by another in the manner hereinabove provided. Upon such removal he shall thereupon be reclassified to the position he held before such appointment but shall not be reduced in pay by more than 25¢ per hour. When a General Leader is absent, another employee shall be designated to act as such and shall also be paid 25¢ per hour above his rate of pay during the time he so acts. No more than one employee shall receive General Leader's compensation at any one time.

15. BEREAVEMENT

It is understood and agreed that the Employer has had a past practice of granting time off for bereavement leave. Such past practice shall continue in effect.

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16. AUTOMOBILES

(a) ~~An employee required to use his own automobile in the service of the Employer shall receive a weekly car allowance of $25.00 plus free gas.~~

(b) ~~Employees provided with company vehicles shall have such vehicles replaced with a new vehicle every three (3) years. The company shall be responsible for all expenses incurred for the operation of said vehicle.~~

17. NO DISCRIMINATION

Neither the Employer nor the Union shall discriminate against any employee or applicant for employment by reason of race, nationality, creed, age, sex, Union membership or non-membership or Union activities (other than as provided in Section 2 hereof).

18. SEPARABILITY

(a) In the event any Section hereof shall be held to be invalid by any court or tribunal of competent jurisdiction, or the compliance with or enforcement of any Section should be restrained by such court or tribunal, the remainder of this Agreement and of any rider hereto shall not be affected thereby.

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(b) In the event that any Section hereof is held invalid, or its enforcement or compliance restrained, the parties shall enter into immediate negotiations, upon the request of either party, for the purpose of arriving at a mutually satisfactory replacement for such Section.

19. /WELFARE PLAN/ 90 DAYS AFTERWARDS /RETROACTIVE

(a) Commencing with the dates indicated below, the Employer shall contribute to the Insurance Trust Fund Local 1034 for each employee scheduled to work twenty (20) hours or more as follows:

Effective	MAY 1, 1975 ----------	$17.00 per week
Effective	MAY 1, 1976 ----------	$18.00 per week
Effective	MAY 1, 1977 ----------	$19.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Insurance Trust Fund for the purpose of providing to covered eligible employees group life insurance, Major Medical Plan, accidental death and dismemberment benefits, hospitalization, surgical, and other benefits for such members and their families under such rules, regulations and conditions as may be established by the Trustees of said Insurance Trust Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Insurance Trust Fund, earnings shall include wages paid in an week and during vacation periods.

(c) Employer shall provide for each employee covered by the Agreement statutory disability benefits as required by State law; the Employer to pay the full cost thereof without any contributions or deductions by the employees.

20. MANDATORY LEGISLATION

In the event that mandatory legislation is enacted resulting in additional costs to the Insurance Trust Fund for maintenance of the currently existing benefits or new benefits required by such legislation, or to fulfil other obligations imposed by such legislation and, further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional costs.

21. SEVERANCE PLAN

(a) Effective November 1, 1974, the Employer shall contribute to the Local 813 and Local 1034 Severance and Retirement Trust Fund for each employee scheduled to work twenty (20) hours or more as follows:

Effective MAY 1, 1975 ---------- $3.00 per week

Effective MAY 1, 1976 ---------- $4.00 per week

Effective MAY 1, 1977 ---------- $5.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Severance Fund for the purpose of providing severance and retirement benefits to covered eligible employees under such rules, regulations and conditions as may be established by the Trustees of said Severance Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Severance Fund, earnings shall include wages paid in any week and during vacation periods.

(c) In the event that mandatory legislation is enacted resulting in additional costs to the Severance Fund for maintenance of the currently existing benefits or new benefits required by such legislation (including vesting requirements), or to fulfil other obligations imposed by such legislation, and further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional costs.

(d) If the Employer dispenses with the services of an employee for other than just cause, the Employer shall pay and the employee shall receive severance pay according to the following schedule:

After 3 to 5 years of service	1 week pay
After 5 to 7 years of service	3 weeks pay
After 7 to 9 years of service	4 weeks pay
After 9 to 10 years of service	5 weeks pay
After 10 to 15 years of service	6 weeks pay
Over 15 years of service	7 weeks pay

(e) In the event of the death of an employee who is eligible for severance pay, the severance pay due to such employee at the time of his death shall be paid to his widow or, if he has none, to his estate.

(f) As the parties hereto agree that the Local 813 and Local 1034 Severance and Retirement Trust Fund does not at this time commence payment of benefits to cover bargaining unit employees of the Employer until 54 months from the effective date of this Agreement, the Employer agrees to continue to provide the severance benefits delineated in paragraph (c) of this Article: provided however that when the Local 813 and Local 1034 Severance and Retirement Trust Fund becomes operative as to payment of benefits to a particular individual covered by the Fund under this contract, the obligation of the Employer contained in said paragraph (c) shall be completely eliminated as to such employee. The Employer shall, however, continue to provide one (1) week's severance pay for all employees severed after 3 but less than 5 years service.

22. METHOD OF PAYMENTS

Within the first seven (7) calendar days of December 1974, the Employer shall submit a report and payment of the amount due each Fund during the month of November 1974. Similarly, during the first seven (7) calendar days of each month thereafter, the Employer Shall submit a report and payment for employees employed in the previous month.

23. DISPUTES CONCERNING PAYMENTS - SECURITY ON DEFAULT

(a) The Employer agrees that should there be any claim by the Union or any of the Trust Funds mentioned in this Agreement as to any discrepancies or disputes concerning the payments by the Employer to the respective Funds, that they or their representatives shall have the right on reasonable notice to examine the Employer's books concerning such discrepancies or disputes, including payroll book, hours of work records, or other records pertaining to the number of employees and/or the hours worked or paid for. There shall be no cessation for any reason whatsoever (no lapse of time) of payments provided to be made to any or all of the Trust Funds mentioned in this Agreement.

(b) In the event the Employer fails to make the aforesaid monthly Plan payments as above mentioned, in addition to paying up any amounts then due, the Employer shall also pay to the Union as security a sum equal to three (3) months Insurance, Pension and Severance contributions based on the greatest number of employees in the prior three (3) months, which security will be held by the Trustees of the respective Funds and used and applied as follows: In the event the Employer shall default in any payment of Insurance, Pension and Severance contributions, the same Trustees may apply any part, or all if necessary, of said security in payment of the items then unpaid, and if said security shall not be sufficient, the Employer shall nevertheless remain liable for the

payment of the balance. In the event the security is applied in payment of any or all the items, the Employer shall within 72 hours after notice pay to the said Trustees, the amount so applied, it being the intention of the parties that there shall be in the security deposit at all times the full amount, and failure by the Employer to do so shall be deemed a breach of this Agreement. The provisions herein regarding payment and security shall in no way limit, restrict or prevent the Union and/or Trustees from taking any other action or remedies or the Union to call a work stoppage because of such default. If there be no charges or claims owing from the Employer at the expiration of the contract, the security shall be returned together with bank interest earned, if any.

24. ADMINISTRATION OF THE PLANS

(a) To the extent and in the manner mentioned, the Employer joins with other employers in this or other industries having agreements with the Union who have made or may make agreements containing provisions similar to those herein set forth, in establishing and maintaining said Funds under such rules and regulations as may be established by the Trustees of said Funds, it being understood and agreed that the Employers shall be under no obligation to see to the application of the monies paid into said Funds pursuant to this paragraph for the purposes and uses thereof, but the said Funds will render reports at periodic intervals to the Employers respecting the application of the monies received and benefits paid.

(b) The said Insurance Trust Fund, and Severance and Retirement Trust Fund are each now being administered by Trustees, an equal number of whom have been appointed by Employers, and an equal number of whom have been appointed by the Union, and shall continue to be so administered. The Employer hereby authorizes the persons (or their successors or others chosen to act in their place and stead) presently designated and acting for the Employers as chosen by Employer associations, to act as Trustees of the Funds, to be the representatives of the Employer, with the same force and effect as if the Employer designated said persons individually and agrees further that any vacancy which occurs may be filled in like manner. Each of the groups having authority to appoint Trustees shall have the right at any time, with or without cause, to remove and replace any Trustee or Trustees so designated by or for them respectively, and to fill any vacancy or vacancies caused by death, resignation, or other cause, of any Trustee or Trustees so designated by or for them respectifely. The said Trustees are authorized to adopt such rules and mulations for the management and administration of the Funds, eligibility for and benefits to be paid as they deem proper and designate as officers of the Fund one or more of the Trustees to act for and on behalf of all the Trustees in any and all matters concerning the Funds. The Funds will be otherwise administered as provided in the Agreement and Declaration of Trust which is dated February 13, 1952 for the Insurance Trust Fund, the Agreement and Declaration of Trust dated September 18, 1962 for the Severance and Retirement Trust Fund,

and any amendments or changes thereof now in effect or hereafter made, and have been entered into between the Union, the Trustees and various Employers. If said Agreements and Declarations of Trust have not been heretofore signed, the Employer hereby adopts said agreements and agrees to be bound thereby including any amendments thereto as if the same were incorporated at length as part of this Agreement; a copy of each of said agreements has been exhibited and delivered to the Employer herein mentioned.

(c) The money, property, or assets of the said Funds, or any of them or any part thereof, shall at no time be considered as that of the Union or any International or any Employer or Employers, but shall at all times belong to the said Funds and to be held and administered as provided by law and in the Agreements and Declarations of Trust.

(d) The Trustees of the respective Funds are hereby authorized and empowered to provide benefits under the Insurance and/or Severance and Retirement Trust Funds mentioned in this Agreement and for the employees of the respective Funds, for the officers and/or employees of the Unions contributing to any or all of the Funds, and for any employees of this or other employers who have agreements with the Union which provide for contributions to the Funds, or any of them, relating to such employees,

25. SUCCESSORS, ASSIGNS, SUB-CONTRACTING

(a) In the event the Employer sells or transfers all or any part of its business, or takes over by purchase or otherwise, the business of any person or firm, the Union shall be notified immediately, and the Employer shall also notify the purchaser or transferee of the existence of all the terms and conditions of this Agreement.

(b) The Employer agrees that except as provided in subsection (c) hereof, no work or services presently performed or hereafter assigned to employees in the collective bargaining unit will be sub-contracted, transferred, leased, assigned or conveyed in whole or in part to any other person, firm partnership, corporation or non-unit worker or workers. Before any change in the methods of operation of the Employer may be instituted or effectuated which might affect the wages, terms, conditions, employment, or otherwise, of any workers covered under this Agreement, it shall first be discussed with the Union, and no changes shall be made unless mutually agreed. Where any change would introduce new job classifications or new types of equipment or result in a reduction of employment opportunities to workers covered by this Agreement, it must first be mutually agreed. As used herein "mutually agreed" shall require actual agreement and not resolution of a disagreement through arbitration.

(c) This Agreement shall be binding upon and inure to the benefits of the parties, their successors, legal representatives and assigns. This Agreement shall be binding upon any person, firm or corporation whether as a successor to the Employer herein mentioned or not, and irrespective of whether the business is thereafter conducted in the same or a different name, if the purchaser or transferee is operating or conducting the same business or a part thereof, directly or indirectly, in whole or in part. In the event an Employer shall sell or otherwise terminate his business and thereafter (either individually or as a partner or as a member of any other firm or corporation) shall again start in this business employing persons in the bargaining unit herein described, he shall assume and be bound by the terms and provisions of this Agreement.

To the extent presently provided, the Employer shall continue to furnish and maintain adequate dressing rooms, lockers, toilets and washing facilities for the employees. Where the health or safety of any employee may be affected due to defects in working conditions, the Employer shall take immediate steps to correct the conditions.

27. JOB PROTECTION.

(a) If through an act of God, catastrophe or firm shutdown, the Employer shall arrange with some other person or firm to do the work normally performed by the employees in the bargaining unit, and if the latter employer needs additional help, the employees who are not working because of the aforesaid events shall be given first preference according to their company-wide seniority and, upon such employment, shall continue to be paid thewages and receive any other fringes and conditions they received at the first firm, but their seniority shall be placed after the employees working at the firm where they are hired. However, when the original Employer resumes operations, the employees shall be recalled by and retain the original company-wide seniority they had at the time the work was farmed out and be paid their regular wages plus any increases provided in the within contract.

(b) During the term of this Agreement, the Employer shall not directly or indirectly, through himself, or itself, or through any other firm, person, corporation, partnership or other entity, operate, maintain or conduct any establishment or place of business for the purpose of evading or which attempts or actually evades any of the terms of this Agreement.

(c) In the event any employee shall suffer loss of earning opportunity due to error or fault of the Employer because of any violation of this Agreement by the Employer or his representative, said employees shall be reimbursed in full.

28. BULLETIN BOARD

The Employer shall furnish a bulletin board at a conspicuous location in the Employer's place of business and shall permit representatives of the Union to post notices pertaining to Union affairs, etc., on the bulletin board. Notices shall avoid controversial issues and shall be shown to the Employer before posting.

29. WAGES AND EARNINGS TO BE PAID WEEKLY

Wages and earnings shall be paid weekly. Where the Employer pays by check, he shall make proper arrangements for the employees to cash the check at the Employer's bank during working hours or to provide other means of cashing the check without any cost to the employee. The Employer shall give each employee an itemized statement each week of all earnings and legal deductions.

30. PICKET LINES

It shall not be a violation of Agreement, and it shall not be cause for discharge or disciplinary action, in the event any employee refuses to go through any lawful primary picket line, including primary picket lines at any place or places of business. Nothing herein contained shall be construed to be a contract or agreement, express or implied, which in any manner violates any Federal or State law as presently enacted or as amended or interpreted during the term of the Agreement.

31. RULES AND REGULATIONS

Employees shall abide by and follow such reasonable rules and regulations as the Employer prescribes providing the same do not conflict with any of the provisions of this Agreement.

32. MANAGEMENT RIGHTS

The management of the Employer's business and the direction of operations are vested solely in the Employer.

33. EMPLOYER RECORDS

The Employer agrees to maintain an adequate record and system of timekeeping, payrolls and employees' records of service as well as records pertaining to employment rates and hours of pay, payment for insurance and other conditions provided for in this Agreement. All of the aforesaid records shall be made available to an authorized Union representative on demand, and he shall have the right to inspect the same. In the event an Employer is found by an Arbitrator to have violated this section, the Union may require installation and maintenance of a time clock.

34. TERM OF AGREEMENT

This Agreement constitutes full accord on all matters properly subject to collective bargaining and shall remain in effect without reopening of any kind from May 1, 1975, through May 1, 1977.

IT WITNESS WHEREOF, this Agreement has been duly executed by the parties the day and year first above written.

LOCAL 1034, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By_____
Martin Adelstein, Secretary-Treasurer

ORTIZ FUNERAL HOME CORP.

By_____

Title_____

APPENDIX "A"

ACROSS THE BOARD WAGE INCREASES

CLASSIFICATION	(Date)	(Date)	(Date)
Interpreters and Receptionists	$10	$10	$10
Maintenance Employees and Porters	10	10	10
Part Time Employees	25¢ per hr.	25¢ pr hr.	25¢ per hr

MINIMUM WAGES

	Effective 1975	Effective 1976	Effective 1977
A. Interpreters and Receptionists	$115	$125	$135
B. Maintenance Employees and Porers	115	125	135
C. Part Time Employees	$2.50 per hr.	$3 per hr.	$3.50 per hr

$10 increase from past 5 day base pay or $115.00 minimum for 5 days

C. COST-OF-LIVING ALLOWANCE

All employees shall receive a cost-of-living allowance to be determined as provided below on the basis of the Consumer Price Index for Moderate Income Families for New York published by the Bureau of Labor Statistics (1957-1959=100) and referred to herein as the Index.

The first cost-of-living allowance shall be effective the first pay period beginning on or after October 10, 1975, based on the difference between the Index for August 1974 and August 1975. The second cost-of-living allowance shall be effective the first pay period beginning on or after October 10, 1976, based on the difference between the Index for August, 1975 and August 1976.

Adjustment of the Cost-of-Living Allowance shall be made on the basis of 1¢ for every .3 point rise in the Index, with a minimum of 8¢ per hour per annum and a maximum of 11¢ per hour per annum.

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REGION 2
N.L.R.B.

LOCAL 1034

Affiliated With:
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

221 PARK AVENUE SOUTH • NEW YORK, N.Y. 10003

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NEW YORK

CHAUFFEURS AND HELPERS
CONTAINER DRUM,
MISCELLANEOUS WORKERS

FUNERAL, LIVERY, RENTALS,
POULTRY, CASKET AND
VAULT EMPLOYEES

BERNARD ADELSTEIN
President
Business Representative

May 1, 1975

Mr. Michael Ortiz
President
Ortiz Funeral Home Corp.
524 Southern Boulevard
Bronx, New York 10455

Re: Ortiz Funeral Home Corp.
Contract to March 21, 1978

Dear Sir:

Enclosed are two contracts, covering Attendants, Floor People, Receptionists, Interpreters and Porters.

Please have both copies signed, return them to me to be executed by the Union, after which I will forward you a fully signed copy.

Very truly yours,

Martin Adelstein

Martin Adelstein
Secretary-Treasurer

MA/js
Encls.

NATIONAL LABOR RELATIONS BOARD
Docket No. GC 5
V
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Hearst

ORTIZ FUNERAL HOME

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CORPORATION

RALPH G. ORTIZ – FUNERAL DIRECTOR

MAIN OFFICE: 524 SOUTHERN BOULEVARD · BRONX, N. Y. 10455

TEL.: LUdlow 5-5700

Conveniently Located Chapels
— Manhattan —
141 East 103rd Street
235 West 72nd Street
22 First Avenue
— Bronx —
524 Southern Boulevard
2121 Westchester Avenue

— Brooklyn —
201 Havemeyer Street
5202 4th Avenue
1521 East New York Ave

RULES AND REGULATIONS FOR CHAPEL PERSONELL

1. All chapel personell will be responsible for the following rules and regulations, read them very carefully and if you do not understand any of them ask your questions now and not later, when it is too late.

2. Day shift will start work at 8:00 A.M. sharp and end at 4:30 P.M. Afternoon or night shift will start work at 4:30 P.M. and end at 12:00 P.M. ~~There will be no excuses for lateness or leaving early unless there are extreme family emergencies.~~

3. No employee is to call the main office unless it is very important and remember think twice before you call and make sure it is important.

4. NO ONE IS TO TELL ANY BODY TO CALL THE OFFICE ABOUT FUNERAL PAPERS LIKE DEATH CERTIFICATE, FUNERAL BILLS, DEES TO CEMETERY, OR ANY OTHER PAPERS OR TO SEND PEOPLE TO THE MAIN OFFICE FOR SUCH PAPERS OR FOR THEM TO CALL FOR PAPERS OR ASK QUESTIONS ABOUT SOME FUNERAL ~~ANYONE FOUND DOING THIS WILL BE FIRED ON THE SPOT IN THE FUTURE.~~ IF SOMEONE CALLS LOOKING FOR PAPERS TAKE THE INFORMATION FROM THE FAMILY. IF YOU DO NOT HAVE THE PAPERS ON HAND AT THE TIME TELL TH THAT YOU WILL LOOK INTO THE SITUATION FOR THEM AND YOU WILL CALL THEM IN A FEW DAYS WITH THE INFORMATION THEY NEED, THIS WAY IT WI ENABLE YOU TO CHECK OUT THE SITUATION WITH THE OFFICE. THIS IS PA OF YOUR JOB IN THE OFFICE OF TAKING CARE OF THE NEEDS OF THE PEOPL

5. NO CHILDREN ARE PERMITTED IN THE CHAPELS OR THE FUNERAL HOME. You will insist on this rule, a funeral home is no place for child when you see children in the funeral home, find the parents and ha them removed, don't just look at them.

. You will be very careful that people do not bring in food or beverages into the funeral home, there are restaurants for these things, do not be afraid of people tell them what you want. I do not want to see coffee stains or soda stains on the furniture or t rugs anymore. KEEP YOUR EYES OPEN FROM NOW ON THAT IS WHAT YOU AR THERE FOR.

Docket No. _____ OFFICIAL EXHIBIT NO. GC 6

Identified ✓

Disposition:

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In the matter of

Date 1/29/15 Reporter adv

ORTIZ FUNERAL HOME

CORPORATION

RALPH G. ORTIZ – FUNERAL DIRECTOR

MAIN OFFICE: 524 SOUTHERN BOULEVARD · BRONX, N. Y. 10455

TEL.: LUdlow 5-5700

Conveniently Located Chapels
— Manhattan —
141 East 103rd Street
235 West 72nd Street
22 First Avenue
— Bronx —
524 Southern Boulevard
2121 Westchester Avenue

— Brooklyn —
201 Havemeyer Stree
5202 4th Avenue
1521 East New York Av

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7. No one is to be doing anymore homework in the different offices, If you have a part time job or go to school on your off hours, very good, but do your homework at home where it should be done, or if you are a salesman on your off hours write your orders on your own time and not on the firms. The reading of magazines or newspapers is permissable when tere are no remains in chapel or if you have nothing else to do, and your chapel is in order.

8. You are to keep your desks free and clear of any and all papers or books. This means there is to be nothing on your desk except what belongs on it. Keep your desk draws in a clean and proper manner. Keep your records always in order, and your funeral papers always in order for when the families come for them you will be able to find them right away, instead of taking an hour to look for them, everything has its place. Make sure you give the families the right papers and see that they sign a receipt for the papers recei

9. Make sure your attire is always neat and clean. You must be clean shaven everyday, ~~no-sideburns-longer-than-mid-ear,~~ no-beards, ~~a~~ mustache, is permissable only if ~~it is~~ kept neat and trimed. No sports jackets sweaters, multicolored shirts, or multicolored shoes will be worn. A dark one colored suit, with a white shirt and dark tie is desire Your shirt will be bottoned up to the top button at all times, I do not want to see any open collars with the excuse it is hot, if I can keep mine closed, then yours will be closed.
Remember when you are on duty you are a representative of the Orti Funeral Home Corp., you are projecting an image to the public, an image I want the public to have respect and confidence in no matte what the case may be.

10. When you come on duty and find some irregularity report it immedia to your supervisor, don't wait until the next day or a week after. I do not want to hear the favorite expression "I forgot".

11. Beofre closing time make sure all chapels are neat and in order, all lights are turned off and the heat is lowered. Do not waste any electricity or heat, only use light where it is necessary. Th goes for the heat and air conditioners as well.

ORTIZ FUNERAL HOME

Conveniently Located Chapels
— Manhattan —
141 East 103rd Street
235 West 72nd Street
22 First Avenue
— Bronx —
524 Southern Boulevard
2121 Westchester Avenue

CORPORATION

RALPH G. ORTIZ — FUNERAL DIRECTOR

MAIN OFFICE: 524 SOUTHERN BOULEVARD · BRONX, N. Y. 10455

TEL.: LUdlow 5-5700

191

— Brooklyn —
201 Havemeyer Street
5202 4th Avenue
1521 East New York Ave

12. All front entrance doors are to be kept open at all times, this means (UNLOCKED)

ATTENTION MANAGERS:

1- If the Hospitals do not sign the death certificate by 2:00 P.M. the remains will not be shown the same day. Remember this is very important.

2- Do not promise any family as to what time the remains will be laid out in chapel until you receive definate information from the main office, generally they will be laid out at 7:00 P.M. There will be no change to this rule.

3- When you are taking information on a new case, make sure your information is correct, I mean correct, the names, address, date of birth etc. If you are in doubt ask the family before they leave, make sure all of your information is correct and complete. If by chance there are some items open tell the family to bring you the correct information the next morning, not two or three days later, make sure they understand the very next morning at 9:00 A.M. or 10:00 A.M. no later. When you have a situation where they might not have the deed to a grave, or a discharge certificate or perhaps some insurance papers or union papers when they are making the arragements tell them to bring you whatever they are missing right away, this means the following, if they are making the arrangements in the morning I want these papers that afternoon, it its at night, I want the papers the next morning at 9:00 A.M. or 10:00 A.M. as an example. NO LATER . . . . . .

To Sonia

Date 7-15 Time 1:55 P.M.

WHILE YOU WERE OUT

M Edna

of Oakley FH.

Phone
Area Code Number Extension

TELEPHONED	PLEASE CALL	
CALLED TO SEE YOU	WILL CALL AGAIN	
WANTS TO SEE YOU	RUSH	
	RETURNED YOUR CALL	

Message Ciro Rojes, Pedro Serrano, and Jose Perez. Rules & Regs will be mailed to you.

Operator

#NY80 Wilco Office Supply

NATIONAL LABOR RELATIONS BOARD

Docket No. GC7

V

V

In

Date 1/29/76 Reporter Adw

No. P

OREGON 4-6500
AREA CODE 212

REGION 2
N.L.R.B.

193

LAW OFFICES

RICHARD A. WEINMANN

'75 JUL 7 PM 12 17

NEW YORK, NEW YORK. 221 PARK AVENUE SOUTH. NEW YORK, N. Y. 10003

June 27, 1975

Mr. Michael Ortiz
President
Ortiz Funeral Home Corp.
524 Southern Boulevard
Bronx, New York 10455

Re: Contract

Dear Mr. Ortiz:

Unless the contract which you agreed to and which was forwarded to you in duplicate on May 1, 1975 is returned executed within 48 hours, my client will take whatever action is indicated. In addition, I have been instructed to take whatever legal action is required in the circumstances.

Please return the signed contract and make such steps unnecessary.

Very truly yours,

Richard A. Weinmann

RAW:lm

NATIONAL LABOR RELATIONS BOARD
Case No. _____ OFFICIAL
Disposition
1/29/76 Witness _____ Rep.

GC 8

adjt

NATIONAL LABOR RELATIONS BOARD

Docket No. _____ OFFICIAL EXHIBIT NO. Resp 1

Date 1/28/76 Reporter Adut

No. Pages

PONCE FUNERAL HOMES, INC.

194

PROPOSED
COLLECTIVE BARGAINING AGREEMENT
Between

LOCAL 1034 aff. I.B. of T.

and

PONCE FUNERAL HOMES, INC.

Period: October 10, 1974 to
October 9, 1977

INTERPRETERS AND RECEPTIONISTS

MAINTENANCE EMPLOYEES AND PORTERS

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AGREEMENT made as of the 2ndday of January 1975, by and between LOCAL 1034 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, hereinafter called "Union" and PONCE FUNERAL HOMES, INC. hereinafter called "Employer".

W I T N E S S E T H :

WHEREAS, the Union was recognized as the collective bargaining representative for the employees covered hereby by STIPULATION dated the 10th day of October, 1974, and

WHEREAS, the parties have met and negotiated the terms and conditions of a collective bargaining agreement, and

WHEREAS, the parties desire to establish and maintain a peaceful and harmonious relationship for their mutual benefit and for the benefit of the employees covered hereby;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining representative of all interpreters, receptionists, maintenance employees and porters, employed by the Employer within the City of New York and Nassau and Westchester County, with respect to wages, hours and other working conditions. Excluded from the coverage of this Agreement are all other employees, executives, guards, watchmen and supervisors, as defined in the Labor Management Relations Act of 1947, as amended, hereinafter referred to as the Act.

2. UNION SECURITY

(a) It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the execution or effective date of this Agreement, whichever is the later shall, in strict accordance with the applicable provisions of the Labor Management Relations Act of 1947, as amended, remain members in good standing, and those who are not members on such date shall, on the 30th day following such date, become and remain members in good standing of the Union. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its execution or effective date, whichever is the later, shall on the 30th day following the beginning of such employment become and remain members in good standing in the Union.

(b) Upon written notice by the Union that any employee has failed to become or remain a member in good standing as required above, the Employer shall suspend such employee for a 24 hour period to afford the employee the opportunity to obtain or regain good standing, failing which, said employee will be discharged forthwith.

(c) In the event of any change in the law during the term of this Agreement, the Employer agrees that the Union will be entitled to the maximum Union security which may be lawfully permissible.

(d) The representative of the Union, on notice to the Employer, shall have access to and shall be admitted to the Employer's place or places of business for the transaction of Union business to ascertain if the provisions of this Agreement are being complied with, to adjust disputes, investigate working conditions and perform such duties as his position with the Union may require, so long as the same does not interfere with the normal course of business.

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4. CHECK-OFF

(a) On the first weekly pay day of each month, the Employer, if authorized by each employee by written assignment, will deduct from the wages a sum equal to such employee's dues and/or initiation fee and/or uniform assessments owed the Union and remit the same to the Union or its duly authorized representatives not later than the 10th day of the month in which deducted. In the event there shall be no earnings or wages due on the first weekly pay day of each month, the Employer shall deduct from the first wages due thereafter the dues and/or initiation fees and/or uniform assessments so owed and to be turned over to the Union within one week from the time such deductions are made. It is understood that this provision is subject to the laws and requirements of the Act. The Employer shall give immediate notice to the Union in writing when a check-off is revoked by an employee.

(b) Should the Employer fail to deduct from the wages of employees the monthly dues and/or initiation fees and/or uniform assessments pursuant to authorization submitted, the Employer shall, nevertheless, be liable to the Union for the amount thereof on the dates the same become due after forty-eight (48) hours notice by the Union. This shall not constitute a waiver of the right of the Employer to collect or recover such monies from the employee.

5. WORK WEEK - HOURS OF WORK

(a) The work-week for covered employee shall consist of forty (40) hours within five (5) consecutive days of eight (8) hours each, exclusive of a one-half hour meal period, with two (2) specified days of rest in each work week. No employee shall be scheduled to work a split shift on any day. The total number of employees who may be scheduled to work less than a forty (40) hour work week shall not exceed twenty per cent (20%) of the total number of employees covered hereby.

(b) The right to schedule working hours and working days of all employees remains at the sole discretion of the Employer provided, however, that employees shall work regularly assigned shifts which shall be posted in advance and which shall not be changed upon less than one (1) week's notice. In the event the Employer changes the regularly assigned shift hours of an employee to new shift hours and the employee whose shift hours are changed objects, such new shift hours shall then be offered to the most senior employee at the location involved and employees shall have the right to accept or reject such permanent shift change in order of seniority; however, the most junior employee shall be required to accept such shift change if all employees senior to him refuse such assignment.

(c) Time worked by an employee before his regularly scheduled starting time or after eight (8) hours per day or forty (40) hours per week shall be paid for at the rate of one and one-half the employee's straight time hourly rate provided, however, there shall be no pyramiding of overtime. Employees who work through their meal time at the Employer's request shall be paid time and one-half for said time. Employees requested to work overtime shall be guaranteed not less than two (2) hours overtime.

(d) Employees required to work on a sixth day in the week shall receive time and one-half their regular hourly rate. Employees required to work on the seventh day of their regular work week shall be paid two (2) times their regular hourly rate for such time worked.

6. WAGES

(a) Across-the-Board Increases - See Appendix A

(b) Minimum Wages - See Appendices A and B

(c) Any employee receiving a wage higher than the minimum wage scale herein contained shall maintain his differential in pay as heretofore

(c) The following wages, benefits and conditions previously paid or granted shall not be reduced or taken away during the full term of this Agreement:

1. Autos - Juan Acevedo and Luis Rodriguez shall continue to receive $15 weekly for expenses incurred in consideration of the use of their respective automobiles for company business.

2. Apartments - A. See letter agreement between the parties.

B. The monthly rent in the current premises of Sylvia Diaz, Leo Morales and William Rivera shall continue to be paid for by the Employer (but not telephone or utilities).

3. Telephones - The monthly telephone charge of Luis Rodriguez shall be paid for by the Employer (other than listed calls).

All wages, benefits and conditions hereafter paid or granted by the Employer which are more beneficial than those provided herein shall not be reduced or taken away during the full term of this Agreement. If any additional wages, benefits or conditions are claimed, the Union and the Employer shall meet to resolve same.

6. GENERAL PROVISIONS

(a) No employee covered hereby shall be required to perform any act or acts or any function that is or may be in violation of any Municipal or State Law, City ordinance or regulation provided, however, that no employee shall refuse to perform as directed by the Employer and that any issue raised hereby shall be submitted to the grievance, and arbitration machinery provided herein.

(b) Employees of other Funeral Directors shall be allowed to work within the Employer's establishments without interference by any employee covered hereby, provided employees covered by this Agreement are not thereby deprived of work opportunities.

(c) The Employer shall not employ more than one (1) Registered Trainee over and above the number of Licensed Funeral Directors that are in his employ, nor more than one (1) Registered Resident for each (10) Licensed Funeral Directors in his employ.

(d) All employees shall receive the following advance notice of changes in schedule:

One (1) week notice for change of schedule which lasts for more than two (2) weeks;

Two (2) weeks notice for holiday schedule;

Four (4) weeks notice for vacation schedule.

(e) The Employer shall not enter into any individual contracts or agreements of any kind with any employee which shall in any manner or form change or attempt to change, modify or nullify any of the terms and conditions of this Agreement, any such agreements, if made, orally or otherwise, shall be void and of no force and effect.

(f) The Employer shall not require nor accept any security of any kind from any employee.

(g) Employees who have been off from work due to illness or injury shall be permitted to return to work upon the presentation to the Employer of a certificate from the employee's physician attesting to the employee's physical fitness.

(h) Any employee required to appear and attend a compensation case hearing shall be paid one day's pay by his Employer, plus the cost of reasonable public conveyance.

(i) In the event any employee is injured while at work, immediate medical attention will be supplied by the Employer. Employees who are injured during working hours shall be paid for the entire day providing the injuries require medical examination and treatment and provided he cannot return to work because of the injury. If a worker leaves the job for medical attention for any on-the-job injury on the day of the injury and returns the same day, he shall be paid for a full day's work. If the employee is unable to return to work, he shall be paid for a full day's work, upon verification by a physician or hospital.

(j) All accidents, regardless of how minor, must be reported to the Employer immediately. (k) The Employer reserves the right to require an employee to submit to a medical examination by its doctor at its expense.

7. SENIORITY

(a) There shall be separate seniority lists for the classifications of employees covered by this Agreement. Seniority lists shall be posted and, on the request of the Union, a list setting forth the name, each employee, his date of hire, his seniority within the classification and rate of pay will be sent to the Union and the Shop Steward within 5 days after requested. If the Employer has more than one (1) place of business, company-wide seniority shall prevail for lay-off and recall, within each classification. Classifications shall be (1) Interpreters and Receptionists and (2) Maintenance Employees and Porters

(b) In the event of the merger of an establishment with the Employer, the seniority rights of the employees of the merged company shall be dovetailed in accordance with company-wide seniority and each employee's seniority shall date from his original employment with the merged company, within each classification.

(c) In the event of the acquisition of a new establishment, employees of the acquired company shall be placed at the bottom of the seniority list, within each classification, but shall retain their original seniority for the purposes of vacation only.

(d) Seniority by establishment shall prevail for vacation selections and overtime assignments, wherever possible.

(e) New employees shall have a probationary period of thirty (30) days during which the Employer may at its sole discretion terminate any such probationary employee and same shall not be subject to grievance or arbitration.

(f) The Employer shall notify the Union in writing immediately in cases of lay-off, discharge, when leaves of absence are granted, and when employees are recalled to work, giving the names of the employees, dates and other information regarding the same.

(g) No worker shall be assigned or reassigned for disciplinary purposes to any work other than that regularly performed by such employee.

(h) The Employer shall notify the Union immediately in writing by giving the name, address, social security number, date of hiring, classification and pay rate upon hiring of any new employee, and shall notify the Union in writing of the names of those employees who have completed their first thirty (30) days of employment, within one week after such completion.

(i) The Employer shall give immediate notice to the Union where an employee does not report to work because of illness, accident, or otherwise, for one week or more. This shall not constitute a grace period for unauthorized absence.

(j) All part-time employees must be laid off in order of their seniority within their classification before any full-time employee may be laid off.

(j) Any employee desiring leave of absence from his employment must secure written permission from both the Union and Employer. Such leave of absence shall be for not more than six (6) months, but may be extended for periods of not more than thirty (30) days by mutual agreement of the Union and Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry in classifications covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority rights. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

(k) Any employee who is designated by the Union to work for the Union shall be granted a leave of absence with no loss of seniority for the duration of his employment with the Union.

(l) Seniority shall be deemed terminated:

1) When an employee resigns;

2) When an employee is discharged for just cause;

3) When an employee is not recalled to work within two (2) years after being laid off; and

4) When after a lay-off an employee fails to give the Employer notice that he will return to work within five (5) days after being notified to report to work and if after given such notice he fails to return to work within ten (10) work days after being notified to report to work.

8. HOLIDAYS

Effective October 10, 1974, all employees shall receive eight (8) holidays off with pay in each contract year, one of which shall be his birthday. Effective October 10, 1975, all employees shall receive an additional holiday off with pay, to total nine (9). Effective October 10, 1976, all employees shall receive an additional holiday off with pay, to total ten (10). If an employee's birthday shall fall on his regular weekly day off, the employee shall have an extra day off of his own choosing. If an employee's birthday shall fall during his vacation, the employee shall have an extra day of vacation.

9. VACATIONS

(a) Annual vacations with pay in advance shall be given by the Employer as follows:

Those employed 6 months through 1 year	1 week
Those employed 1 year through 8 years	2 weeks
Those employed 8 years through 13 years	3 weeks
Those employed 13 years or more	4 weeks

(b) All vacation schedules shall start on the first workday of each employee's workweek.

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(c) The Employer shall give employees four (4) weeks' notice of their vacation. An employee shall be entitled to vacations during June, July, August or September provided that employees who desire to take a vacation during any other time of the year shall be allowed to do so upon agreement between the Employer and the Union. Vacation in excess of two (2) weeks shall not be consecutive unless agreed to by the Employer. Seniority by classification shall prevail when vacations are being picked.

(d) An employee who quits or is terminated prior to or during his vacation period shall receive at the time of his termination his full vacation if he has earned same, and if he has not earned a full vacation, then he shall be paid at the rate of one-twelfth for each month or major fraction of a month worked during his anniversary year. Employees shall give the Employer two (2) weeks notice before quitting.

(e) In the event of the death of an employee who is eligible for vacation, the full or pro-rata vacation pay of such an employee shall be paid to his widow, if any, or, if none, to his estate.

10. GRIEVANCE AND ARBITRATION

(a) Should any dispute or difference arise between the Employer and the Union, it shall be discussed between the Employer or his representative and an authorized representative of the Union in an effort to adjust the same. In the event that within two weeks after the commencement of such discussions, or by such other time as the parties agree, no settlement can be reached, the matter may be submitted to arbitration by an Arbitrator designated by the New York State Mediation Board. The parties hereby confer jurisdiction on the New York State Mediation Board for that purpose and do further confer jurisdiction to the Courts of the State of New York and further agree that the arbitration and all proceedings in connection therewith shall be in accordance with the arbitration laws of the State of New York. All notices required to institute, proceed with, and the conduct of the arbitration or any proceedings to enforce the award of the Arbitrator, may be served personally within or without the State of New York, or by certified mail to the last known address and shall have the same effect as if service was made personally within the State of New York. The decision of the Arbitrator shall be final and binding on the parties and enforceable in any court of competent jurisdiction.

(b) No Arbitrator shall have the power to change, add to, or subtract from the terms and conditions of this Agreement, but shall have the power only to interpret the language thereof. His fees shall be borne equally by the parties.

11. DISCHARGE - SUSPENSION - DISCIPLINE

(a) No employee shall be discharged, suspended or disciplined without just cause and without prior notice to the Union except in case of theft of money, goods or merchandise during working hours, or being under the influence of liquor or drugs during working hours and on notice to the Union. If the Union representative does not take up the matter within 72 hours (Saturday, Sunday and holidays excepted), the Employer may take such action as it deems necessary. If the Union claims the discharge is not justified, it shall be submitted for arbitration in accordance with Section 10 hereof. If the Arbitrator finds such discharge, suspension or discipline was not justified, the employee may be reinstated with full pay for all time lost. If such action is found to be justified, the employee shall suffer such penalty without further recourse.

(b) An employee who is taken ill while working may not be discharged for any cause during his illness and convalescing period, provided that the employee forthwith shall submit a doctor's opinion that he will be available to resume his duties within six (6) months, and his substitute shall be told by the Employer at the time of hiring that his employment is only temporary. The sick employee, when physically fit to resume his duties, shall be restored to his former position with all the same rights and benefits he enjoyed before he was taken ill. This shall not apply to employees who became totally disabled and who may, therefore, be permanently replaced. In case of serious illness or accident, the Employer reserves the right to have the employee examined by a company physician at its own expense before permitting an employee to resume work.

12. MILITARY SERVICE

(a) The standing of any employee shall not be prejudiced by service in the Armed Forces of the United States Government, and any employee shall regain his former position and seniority, if physically fit upon his return, replacing his substitute, notwithstanding his absence from employment due to military service within the Armed Forces of the United States.

(b) The foregoing applies only if the employee seeks his former position within a ninety (90) day period after his honorable discharge from the Armed Forces of the United States.

13. SHOP STEWARDS

(a) The Employer recognizes the right of the Union to designate Shop Stewards and alternates. The Union reserves the right to remove the Steward at any time. One of the employees employed by the Employer shall be designated as Shop Steward; there shall be an alternate Shop Steward where required.

(b) The authority of Shop Stewards and alternates so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

(1) The investigation and presentation of grievances in accordance with the provisions of the Collective Bargaining Agreement;

(2) The collection of dues when authorized by appropriate Local Union action;

(3) The transmission of such messages and information which shall originate with, and are authorized by the Local Union.

(c) Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business, except as authorized by official action of the Union.

(d) The Employer recognizes these limitations upon the authority of Shop Stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the Shop Steward has taken unauthorized strike action, slow-down, or work stoppage in violation of this Agreement.

(c) In case of lay-off, the Shop Steward shall be the last to be laid off. Shop Stewards and alternates shall not be discriminated against by reason of the position they hold. No employee, Shop Steward, alternate, or group of employees shall have the right to modify or waive any of the provisions of this Agreement or settle any dispute with the Employer.

(d) Any Shop Steward or alternate (but not both) required to appear in Court, or at the National Labor Relations Board, or New York State Labor Relations Board, or at any arbitration proceedings in any matter affecting this Agreement, shall be paid only for the straight time hours he would have worked in any such day.

14. GENERAL LEADER

The Employer shall appoint, after the recommendation of the Union, one of the employees covered by this Agreement as General Leader who shall be paid 25¢ per hour above his then rate of pay. He may be removed at any time and replaced by another in the manner hereinabove provided. Upon such removal he shall thereupon be reclassified to the position he held before such appointment but shall not be reduced in pay by more than 25¢ per hour. When a General Leader is absent, another employee shall be designated to act as such and shall also be paid 25¢ per hour above his rate of pay during the time he so acts. No more than one employee shall receive General Leader's compensation at any one time.

15. BEREAVEMENT

It is understood and agreed that the Employer has had a past practice of granting time off for bereavement leave. Such past practice shall continue in effect.

16. AUTOMOBILES

(a) Past practice shall continue for each employee required to use his own automobile in the service of the Employer.

(b) Employees provided with company vehicles shall have such vehicles replaced with a new vehicle every three (3) years. The company shall be responsible for all expenses incurred for the operation of said vehicle.

17. NO DISCRIMINATION

Neither the Employer nor the Union shall discriminate against any employee or applicant for employment by reason of race, nationality, creed, age, sex, Union membership or non-membership or Union activities (other than as provided in Section 2 hereof).

18. SEVERABILITY

(a) In the event any Section hereof shall be held to be invalid by any court or tribunal of competent jurisdiction, or the compliance with or enforcement of any Section should be restrained by such court or tribunal, the remainder of this Agreement and of any rider hereto shall not be affected thereby.

(b) In the event that any Section hereof is held invalid, or its enforcement or compliance restrained, the parties shall enter into immediate negotiations, upon the request of either party, for the purpose of arriving at a mutually satisfactory replacement for such Section.

19. WELFARE PLAN

(a) Commencing with the dates indicated below, the Employer shall contribute to the Insurance Trust Fund Local 103 for each employee scheduled to work twenty (20) hours or more as follows:

Effective November 1, 1974 ----------	$17.00 per week
Effective November 1, 1975 ----------	$18.00 per week
Effective November 1, 1976 ----------	$19.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Insurance Trust Fund for the purpose of providing to covered eligible employees group life insurance, Major Medical Plan, accidental death and dismemberment benefits, hospitalization, surgical, and other benefits for such members and their families under such rules, regulations and conditions as may be established by the Trustees of said Insurance Trust Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Insurance Trust Fund, earnings shall include wages paid in any week and during vacation periods.

(c) The Employer shall provide for each employee covered by the Agreement statutory disability benefits as required by State law; the Employer to pay the full cost thereof without any contributions or deductions by the employees.

20. MANDATORY LEGISLATION

In the event that mandatory legislation is enacted resulting in additional costs to the Insurance Trust Fund for maintenance of the currently existing benefits or new benefits required by such legislation, or to fulfil other obligations imposed by such legislation and further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional

21. SEVERANCE PLAN

(a) Effective November 1, 1974, the Employer shall contribute to the Local 813 and Local 1034 Severance and Retirement Trust Fund for each employee scheduled to work twenty (20) hours or more as follows:

Effective November 1, 1974 ---------- $3.00 per week

Effective November 1, 1975 ---------- $4.00 per week

Effective November 1, 1976 ---------- $5.00 per week

(b) Said contributions by the Employer shall be computed from the employee's first day of employment, whether or not said employee is a member of the Union, and shall continue during the full term of this Agreement to be used by said Severance Fund for the purpose of providing severance and retirement benefits to covered eligible employees under such rules, regulations and conditions as may be established by the Trustees of said Severance Fund. Said payments shall be made solely by the Employer without any contributions being required or deducted from the employees. For the purpose of ascertaining the payments to be made by the Employer to the Severance Fund, earnings shall include wages paid in any week and during vacation periods.

(c) In the event that mandatory legislation is enacted resulting in additional costs to the Severance Fund for maintenance of the currently existing benefits or new benefits required by such legislation (including vesting requirements), or to fulfil other obligations imposed by such legislation, and further, upon a determination by the Trustees that said additional costs are solely and directly occasioned by said legislation, the Employer agrees to contribute such amounts as the Trustees determine are required to cover such additional costs.

(d) If the Employer dispenses with the services of an employee for other than just cause, the Employer shall pay and the employee shall receive severance pay according to the following schedule:

After 3 to 5 years of service	1 week pay
After 5 to 7 years of service	3 weeks pay
After 7 to 9 years of service	4 weeks pay
After 9 to 10 years of service	5 weeks pay
After 10 to 15 years of service	6 weeks pay
Over 15 years of service	7 weeks pay

(e) In the event of the death of an employee who is eligible for severance pay, the severance pay due to such employee at the time of his death shall be paid to his widow or, if he has none, to his estate.

(f) As the parties hereto agree that the Local 813 and Local 1034 Severance and Retirement Trust Fund does not at this time commence payment of benefits to cover bargaining unit employees of the Employer until 54 months from the effective date of this Agreement, the Employer agrees to continue to provide the severance benefits delineated in paragraph (c) of this Article: provided however that when the Local 813 and Local 1034 Severance and Retirement Trust Fund becomes operative as to payment of benefits to a particular individual covered by the Fund under this contract, the obligation of the Employer contained in said paragraph (c) shall be completely eliminated as to such employee. The Employer shall, however, continue to provide one (1) week's severance pay for all employees severed after 3 but less than 5 years service.

22. METHOD OF PAYMENTS

Within the first seven (7) calendar days of December 1974, the Employer shall submit a report and payment of the amount due each Fund during the month of November 1974. Similarly, during the first seven (7) calendar days of each month thereafter, the Employer shall submit a report and payment for employees employed in the previous month.

23. DISPUTES CONCERNING PAYMENTS - SECURITY OF DEFAULT

(a) The Employer agrees that should there be any claim by the Union or any of the Trust Funds mentioned in this Agreement as to any discrepancies or disputes concerning the payments by the Employer to the respective Funds, that they or their representatives shall have the right on reasonable notice to examine the Employer's books concerning such discrepancies or disputes, including payroll book, hours of work records, or other records pertaining to the number of employees and/or the hours worked or paid for. There shall be no cessation for any reason whatsoever (no lapse of time) of payments provided to be made to any or all of the Trust Funds mentioned in this Agreement.

(b) In the event the Employer fails to make the aforesaid monthly Plan payments as above mentioned, in addition to paying up any amounts then due, the Employer shall also pay to the Union as security a sum equal to three (3) months Insurance, Pension and Severance contributions based on the greatest number of employees in the prior three (3) months, which security will be held by the Trustees of the respective Funds and used and applied as follows: In the event the Employer shall default in any payment of Insurance, Pension and Severance contributions, the same Trustees may apply any part, or all if necessary, of said security in payment of the items then unpaid, and if said security shall not be sufficient, the Employer shall nevertheless remain liable for the

payment of the bond here. In the event the security is applied in payment of any or all the items, the Employer shall within 72 hours after notice pay to the said Trustees, the amount so applied, it being the intention of the parties that there shall be in the security deposit at all times the full amount, and failure by the Employer to do so shall be deemed a breach of this Agreement. The provisions herein regarding payment and security shall in no way limit, restrict or prevent the Union and/or Trustees from taking any other action or remedies or the Union to call a work stoppage because of such default. If there be no charges or claims owing from the Employer at the expiration of the contract, the security shall be returned together with bank interest earned, if any.

24. ADMINISTRATION OF THE PLANS

(a) To the extent and in the manner mentioned, the Employer joins with other employers in this or other industries having agreements with the Union who have made or may make agreements containing provisions similar to those herein set forth, in establishing and maintaining said Funds under such rules and regulations as may be established by the Trustees of said Funds, it being understood and agreed that the Employers shall be under no obligation to see to the application of the monies paid into said Funds pursuant to this paragraph for the purposes and uses thereof, but the said Funds will render reports at periodic intervals to the Employers respecting the application of the monies received and hereunder paid.

(b) The said Insurance Trust Fund, and Severance and Retirement Trust Fund are each now being administered by Trustees, an equal number of whom have been appointed by Employers, and an equal number of whom have been appointed by the Union and shall continue to be so administered. The Employer hereby authorizes the persons (or their successors or others chosen to act in their place and stead) presently designated and acting for the Employers as chosen by Employer associations, to act as Trustees of the Funds, to be the representatives of the Employer, with the same force and effect as if the Employer designated said persons individually and agrees further that any vacancy which occurs may be filled in like manner. Each of the groups having authority to appoint Trustees shall have the right at any time, with or without cause, to remove and replace any Trustee or Trustees so designated by or for them respectively, and to fill any vacancy or vacancies caused by death, resignation, or other cause, of any Trustee or Trustees so designated by or for them respectively. The said Trustees are authorized to adopt such rules and regulations for the management and administration of the Funds, eligibility for and benefits to be paid as they deem proper and designate as officers of the Fund one or more of the Trustees to act for and on behalf of all the Trustees in any and all matters concerning the Funds. The Funds will be otherwise administered as provided in the Agreement and Declaration of Trust which is dated February 13, 1952 for the Insurance Trust Fund, the Agreement and Declaration of Trust dated September 18, 1962 for the Severance and Retirement Trust Fund,

and any amendments or changes thereof now in effect or hereafter made, and have been entered into between the Union, the Trustees and various Employers. If said Agreements and Declarations of Trust have not been heretofore signed, the Employer hereby adopts said agreements and agrees to be bound thereby including any amendments thereto as if the same were incorporated at length as part of this Agreement; a copy of each of said agreements has been exhibited and delivered to the Employer herein mentioned.

(c) The money, property, or assets of the said Funds, or any of them or any part thereof, shall at no time be considered as that of the Union or any International or Any Employer or Employers, but shall at all times belong to the said Funds and to be held and administered as provided by law and in the Agreements and Declarations of Trust.

(d) The Trustees of the respective Funds are hereby authorized and empowered to provide benefits under the Insurance and/or Severance and Retirement Trust Funds mentioned in this Agreement and for the employees of the respective Funds, for the officers and/or employees of the Unions contributing to any or all of the Funds, and for any employees of this or other employers who have agreements with the Union which provide for contributions to the Funds, or any of them, relating to such employees.

25. SUCCESSORS, ASSIGNS, SUB-CONTRACTING

(a) In the event the Employer sells or transfers all or any part of its business, or takes over by purchase or otherwise, the business of any person or firm, the Union shall be notified immediately, and the Employer shall also notify the purchaser or transferee of the existence of all the terms and conditions of this Agreement.

(b) The Employer agrees that except as provided in subsection (c) hereof, no work or services presently performed or hereafter assigned to employees in the collective bargaining unit will be sub-contracted, transferred, leased, assigned or conveyed in whole or in part to any other person, firm partnership, corporation or non-unit worker or workers. Before any change in the methods of operation of the Employer may be instituted or effectuated which might affect the wages, terms, conditions, employment, or otherwise, of any workers covered under this Agreement, it shall first be discussed with the Union, and no changes shall be made unless mutually agreed. Where any change would introduce new job classifications or new types of equipment or result in a reduction of employment opportunities to workers covered by this Agreement, it must first be mutually agreed. As used herein "mutually agreed" shall require actual agreement and not resolution of a disagreement through arbitration.

(c) This Agreement shall be binding upon and inure to the benefits of the parties, their successors, legal representatives and assigns. This Agreement shall be binding upon any person, firm or corporation whether as a successor to the Employer herein mentioned or not, and irrespective of whether the business is thereafter conducted in the same or a different name, if the purchaser or transferee is operating or conducting the same business or a part thereof, directly or indirectly, in whole or in part. In the event an Employer shall sell or otherwise terminate his business and thereafter (either individually or as a partner or as a member of any other firm or corporation) shall again start in this business employing persons in the bargaining unit herein described, he shall assume and be bound by the terms and provisions of this Agreement.

BEST COPY AVAILABLE

26. EMPLOYEES' CONVENIENCES

To the extent presently provided, the Employer shall continue to furnish and maintain adequate dressing rooms, lockers, toilets and washing facilities for the employees. Where the health or safety of any employee may be affected due to defects in working conditions, the Employer shall take immediate steps to correct the conditions.

27. JOB PROTECTION

(a) If through an Act of God, catastrophe or firm shut-down, the Employer shall arrange with some other person or firm to do the work normally performed by the employees in the bargaining unit, and if the latter employer needs additional help, the employees who are not working because of the aforesaid events shall be given first preference according to their company-wide seniority and, upon such employment, shall continue to be paid the wages and receive any other fringes and conditions they received at the first firm, but their seniority shall be placed after the employees working at the firm where they are hired. However, when the original Employer resumes operations, the employees shall be recalled by and retain the original company-wide seniority they had at the time the work was farmed out and be paid their regular wages plus any increases provided in the within contract.

(b) During the term of this Agreement, the Employer shall not directly or indirectly, through himself, or itself, or through any other firm, person, corporation, partnership or other entity, operate, maintain or conduct any establishment or place of business for the purpose of evading or which attempts or actually evades any of the terms of this Agreement.

(c) In the event any employee shall suffer loss of earning opportunity due to error or fault of the Employer because of any violation of this Agreement by the Employer or his representative, said employees shall be reimbursed in full.

28. BULLETIN BOARD

The Employer shall furnish a bulletin board at a conspicuous location in the Employer's place of business and shall permit representatives of the Union to post notices pertaining to Union affairs, etc., on the bulletin board. Notices shall avoid controversial issues and shall be shown to the Employer before posting.

29. WAGES AND EARNINGS TO BE PAID WEEKLY

Wages and earnings shall be paid weekly. Where the Employer pays by check, he shall make proper arrangements for the employees to cash the check at the Employer's bank during working hours or to provide other means of cashing the check without any cost to the employee. The Employer shall give each employee an itemized statement each week of all earnings and legal deductions.

30. PICKET LINES

It shall not be a violation of Agreement, and it shall not be cause for discharge or disciplinary action, in the event any employee refuses to go through any lawful primary picket line, including primary picket lines at any place or places of business. Nothing herein contained shall be construed to be a contract or agreement, express or implied, which in any manner violates any Federal or State law as presently enacted or as amended or interpreted during the term of the Agreement.

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31. RULES AND REGULATIONS

Employees shall abide by and follow such reasonable rules and regulations as the Employer prescribes providing the same do not conflict with any of the provisions of this Agreement.

32. MANAGEMENT RIGHTS

The management of the Employer's business and the direction of operations are vested solely in the Employer.

33. EMPLOYER RECORDS

The Employer agrees to maintain an adequate record and system of timekeeping, payrolls and employees' records of service as well as records pertaining to employment rates and hours of pay, payment for insurance and other conditions provided for in this Agreement. All of the aforesaid records shall be made available to an authorized Union representative on demand, and he shall have the right to inspect the same. In the event an Employer is found by an Arbitrator to have violated this section, the Union may require installation and maintenance of a time clock.

34. TERM OF AGREEMENT

This Agreement constitutes full accord on all matters properly subject to collective bargaining and shall remain in effect without reopening of any kind from October 10, 1974, through October 9, 1977.

IT WITNESS WHEREOF, this Agreement has been duly executed by the parties the day and year first above written.

LOCAL 1034, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By_____
Martin Adelstein, Secretary-Treasurer

PONCE FUNERAL HOMES, INC.

By_____

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APPENDIX A

ACROSS THE BOARD WAGE INCREASES

CLASSIFICATION	10/10/74	10/10/75	10/10/76
INTERPRETERS AND RECEPTIONISTS	$10	$10	$10
MAINTENANCE EMPLOYEES AND PORTERS	10	10	10
PART TIME EMPLOYEES	25¢ per hour	25¢ per hour	25¢ per hour

MINIMUM WAGES

	RATE Effective 10/10/74	Effective 10/10/75	Effective 10/10/76
A. INTERPRETERS AND RECEPTIONISTS	$115	$125	$135
B. MAINTENANCE EMPLOYEES AND PORTERS	115	125	135
C. PART TIME EMPLOYEES	$2.50 per hr.	$3 per hour	$3.50 per hour

COST OF LIVING ALLOWANCE

All employees shall receive a cost-of-living allowance to be determined as provided below on the basis of the Consumer Price Index for Moderate Income Families for New York published by the Bureau of Labor Statistics (1957-1959=100) and referred to herein as the Index.

The first cost-of-living allowance shall be effective the first pay period beginning on or after October 10, 1975, based on the difference between the Index for August 1974 and August 1975. The second cost-of-living allowance shall be effective the first pay period beginning on or after October 10, 1976, based on the difference between the Index for August 1975 and August 1976.

Adjustment of the Cost-of-Living Allowance shall be made on the basis of 1¢ for every .3 point rise in the Index, with a minimum of 8¢ per hour per annum, and a maximum of 11¢ per hour per annum.

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APPENDIX B 2

WAGE SCHEDULE

	Effective 10/10/74	Effective 10/10/75	Effective 10/10/76
Leo Morales	$240	$250	$260
Juan Acevedo	210	220	230
William Rivera	160	170	180
Luis Rodriguez	155	165	175
Sylvia Diaz	125	135	145
Blanco Bermudez	115	125	135
Porters	115	125	135

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- -

In the Matter of
MARTIN ADELSTEIN, AS SECRETARY-TREASURER OF LOCAL 1034 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner

-against-

ORTIZ FUNERAL HOME CORP.

Respondent

NOTICE OF INTENTION TO CONDUCT AN ARBITRATION

- -x

TO THE RESPONDENT ABOVE NAMED:

PLEASE TAKE NOTICE that pursuant to the contract between the above named parties dated March 22, 1975 and expiring March 21, 1978 which provides in part for arbitration of disputes between the parties, and pursuant to Section 7503(c) of the CIVIL PRACTICE LAW AND RULES and other applicable laws of the State of New York, the undersigned Union will proceed to a hearing of certain disputes between the parties as set forth in the statement hereto attached before an arbitrator designated by the New York State Mediation Board.

PLEASE TAKE FURTHER NOTICE that unless within 20 days after the service of this Notice upon you, you comply with Section 7503(c) of the CPLR and apply to stay the said arbitration, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting the bar of a limitation of time. Should you not so apply, the undersigned Union will proceed and present its evidence to the Arbitrator in support of its contentions, and shall, pursuant to the agreement hereinbefore referred to and the CPLR, request that an award be made and entered by the said Arbitrator.

Dated, New York, N.Y.
July 16, 1975

Yours, etc.

LOCAL 1034, I.B.T.

To: Ortiz Funeral Home Corp.
524 Southern Blvd.
Bronx, N.Y. 10455

By Martin Adelstein
MARTIN ADELSTEIN
SECRETARY-TREASURER

221 Park Avenue South
New York, N.Y. 10003

DEMAND IS MADE THAT THE EMPLOYER PRODUCE AT THE HEARING ALL BOOKS, RECORDS, EMPLOYEE TIME CARDS, PAYROLLS AND/OR WORK RECORDS, ALL SOCIAL SECURITY, UNEMPLOYMENT, WORKMEN'S COMPENSATION AND WITHHOLDING REPORTS, AS WELL AS ALL OTHER RECORDS PERTAINING TO THE DISPUTES.

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Firm Name Ortiz Funeral Home Corp.

Date July 16, 1975

STATEMENT OF DISPUTES

1. The Employer has not remitted the Insurance, Pension, Severance Plan or other obligations required by the contract.

2. The Union claims that the Employer is required to post security as required by the contract.

3. The Employer has failed and refused to make its books and records available for audit by the Union after due written notice, as required by the contract.

The Union reserves the right at the hearing to amend the amounts claimed herein to include: (1) the non-payment of any additional moneys which became due subsequently and which have not been paid as of the date of hearing, and (2) any other related breaches of contract not complied with by the Employer as of the date of the hearing.

NATIONAL LABOR RELATIONS BOARD
Docket No. 2-CA-10641
214
In the matter of
Date 1/29/76 Witness
No. Pages

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

In the Matter of the Application of

ORTIZ FUNERAL HOME CORP.,

Petitioner,

INDEX NO.12882/75

For a Judgment staying the Arbitration commenced by

MARTIN ADELSTEIN, as Secretary Treasurer of Local 1034 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

HELMAN, J.:

Application to stay arbitration is granted. The parties have had a dispute over organizing the employees of petitioner. They have negotiated most of the terms of a collective bargaining agreement but allegedly have not reached any agreement as to coverage of certain employees. No written agreement has been signed. Respondent has filed an unfair labor charge with the National Labor Relations Board claiming that petitioner failed to sign a written contract.

CPLR 7501 permits enforcement of a written agreement to submit controversies to arbitration. No such written agreement presently exists and there is no agreement which has expired.

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Section 8 (d) of the Labor Management Relations Act (29 U.S.C.A. §158[d]) provides that for purposes of the section dealing with unfair labor practices, to bargain collectively includes "the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . "

This statute does not create an enforceable agreement before one is executed. It recognizes the need for a written agreement and provides the basis of a remedy to compel execution of an agreement. The issue raised by petitioner as to the number of men covered by the agreement is a material one, and while the union may challenge the employer's good faith in refusing to sign a contract, the fact is that no binding agreement has been made as to each of the material terms of the agreement. The arbitration clause, (p. 10) cannot be extracted from the agreement so as to bind the parties to its provisions, in the absence of proof that the agreement itself has been adopted by both parties.

Respondent may not enforce the alleged agreement until the National Labor Relations Board makes a determination and directs execution of an agreement. It is more appropriate that this determination be made by the administrative body created to do so and whose remedy was initially sought by respondent.

Settle order.

DATED: SEP 26 1975, 1975

J. S. C.

JD-307-76
New York, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ORTIZ FUNERAL HOME CORP.

and

Case 2-CA-13804

LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Frank H. McCulloch, Esq., for the General Counsel.
N. George Turchin, Esq., for the Respondent.
Richard A. Weinmann, Esq., for the Charging Party.

DECISION

Statement of the Case

BENJAMIN B. LIPTON, Administrative Law Judge: This case was tried in New York, New York, on January 28 and 29, 1976, upon a complaint by the General Counsel 1/ alleging that the above-captioned Respondent violated Section 8(a)(5) and (1) of the Act. Post-hearing briefs filed by each of the parties have been duly considered.

Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following:

1/ The charge was filed and served by registered mail on July 7, 1975. The complaint thereon issued on September 29, 1975. Hereinafter all dates are in 1975 except as specifically noted.

Findings of Fact

I. Jurisdiction and Labor Organization

Respondent operates funeral homes and provides burial arrangements and related services at its various places of business in the City of New York, New York. Its principal business location and office are in the Bronx, New York. During the year preceding the issuance of the complaint, Respondent had gross revenues in excess of $500,000 and had a direct inflow in interstate commerce of goods and materials valued in excess of $25,000. Respondent admits, and I find, that it is engaged in commerce, and that the Union (as appears in the case-caption) is a labor organization, within the meaning of the Act.

II. The Unfair Labor Practices

A. Issues

Respondent is alleged to have violated Section 8(a)(5) by refusing to sign a collective-bargaining contract following negotiations in which the parties had orally reached essential agreement. An underlying question is whether Respondent's insistence that the contract specify the names of the employees covered in the appropriate unit was imposed as an improper condition to its signing the contract.

B. Background and Introductory Factors

On January 24, a complaint in Case 2-CA-13540 was issued against Respondent alleging violations of Section 8(a)(1), (3) and (5) of the Act. On March 21, the Union and Respondent entered into a written agreement to resolve the issues in that complaint proceeding and to settle a related strike pending for about 3 months. The agreement, approved by the Regional Director on April 7, provides, inter alia, that Respondent reinstate eight named employees with backpay, recognize and bargain collectively with the Union in the appropriate unit, and execute a written contract incorporating any agreement reached. The settlement agreement described the appropriate unit, viz.:

> . . . the employees in the unit including attendants, floorpeople, receptionists, interpreters and porters but excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the Act . . . .

It appears that Respondent immediately undertook to carry out the terms of the settlement agreement. At a meeting on or about March 24, Respondent granted recognition to the Union as the exclusive representative of the employees in the above-described unit. 2/ On April 4, Respondent met with employees and a union agent to determine job assignments for reinstatement of the strikers. Thereafter, contract negotiations were conducted, principally on April 10 and 28, at the Union's offices. In attendance for

2/ Undenied in Respondent's answer to the complaint.

the Union were Michael Fleischer and Martin Edelstein, union officials; Attorney Weinmann; Domingo Vargas and one Serrano, employees. 3/ At all meetings and other discussions, Michael Ortiz was the sole representative for Respondent. 4/

In opening statements at the hearing, the parties described the essentials issues in the case. Attorney Turchin asserted that, during the negotiations, a dispute existed as to the number of employees to be included in the unit, with Respondent taking the position that only four employees were covered. Turchin was questioned whether the Company "agreed to everything that was negotiated, all the terms, conditions of the contract [and whether] the only dispute involved the unit." He stated that "the rules and regulations and small issues that were not completed, could have been completed . . . The only material issue was the number of people included in this particular unit." Respondent had declined the Union's proposal that it sign the contract and, if there was any question concerning the unit coverage, it could be resolved by arbitration. 5/ And the final position of Respondent was a refusal to sign anything until such question was determined.

C. Evidence

At the April 10 meeting the parties reviewed in detail a full contract proposal presented by the Union. Ortiz raised questions as to specific provisions, and certain changes were agreed upon. At the April 28 meeting, further discussion resulted in additional changes to the proposed contract. Employee Vargas credibly testified that, "after negotiations had ceased . . . we were all in agreement." 6/ On May 1, the Union sent Ortiz two copies of a revised contract incorporating the agreed changes. The covering letter requested Ortiz to sign and return both copies to the Union following which the Union would send him a fully signed copy. As I find, Ortiz did not respond to this letter. Fleischer testified that, in mid-May, he delivered to Ortiz at Respondent's main office another set of contracts, after Ortiz had advised the Union that his car had been stolen containing the copies of the contract he had earlier received. 7/ About the third week in May, Fleischer again visited Ortiz, principally concerning a matter not material herein. Fleischer testified in substance that, at both these meetings

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3/ Variations not deemed material are shown in the testimony of witnesses, e.g., the presence of Bernard Edelstein, president of the Union, and the absence of Weinmann.

4/ Respondent had no legal counsel in the negotiations.

5/ Merely as background narrative, it is noted that, on July 16, the Union filed with the Supreme Court of New York a "Notice of Intention to Conduct an Arbitration," and that the court on September 26, granted the Company's application to stay arbitration on the ultimate basis that the Union "may not enforce the alleged agreement until the National Labor Relations Board makes a determination and directs execution of an agreement."

6/ Corroborated by Martin Edelstein.

7/ Ortiz testified that his car was stolen about June 16, and that he called Fleischer in latter June and was then brought the replacement copies.

in May, Ortiz indicated that he wanted to show the contract to his father "out of respect," and there was "no problem" as to the signing of the contract as soon as his father comes back. 8/ Respondent stipulated at the hearing, for the purpose of delineating the dispute regarding the Union's "final proposed contract," that the "major issue" was Respondent's request that the contract specify the names of the employees included in the unit, and that further issues were "extra pay for group leaders, severance, holidays and rules and regulations." It was then ruled that only these enumerated subjects of the contract negotiations need be litigated. 9/ Vargas gave credible testimony regarding the negotiations in April. On April 10, the Union initially proposed 15 holidays and 3 days of bereavement leave. Ortiz offered 12 holidays, to be enumerated. The parties finally agreed to delete the bereavement clause and provide 15 holidays unnamed. Concerning the "general leader" clause, Ortiz wanted to know the name of such leader, -- who was to be the same as the shop steward. Vargas did not recall the further discussion on the subject. Ortiz requested that the recognition clause describe the appropriate unit as set forth in the settlement agreement. This was agreed. At the April 10 and 28 meetings, Ortiz raised no questions as to the naming of employees covered in the unit.

Martin Edelstein credibly testified that, at the April 10 meeting, after he explained the method of contributions to be made into the trust fund under the severance plan, Ortiz had no further questions on this clause. The Union had received from Respondent a list of rules and regulations, and at a later date it proposed certain changes in language. 10/ It was ultimately agreed that Ortiz would send the Union, on his stationery, a revised copy of the rules and regulations.

In broad terms, Ortiz testified in contradiction of the General Counsel's witnesses. The substance is as follows: On April 10, he asked the Union for a list of employees who had signed authorization cards, and Fleischer promised such a list. On April 28, the questions he had raised regarding the proposed contract on April 10 remained unanswered. At the April 28 meeting, he requested a list of employees covered in the unit. And he had not agreed to sign the contract. After he received the Union's final proposed contract (cover letter dated May 1), he telephoned Bernard Edelstein. He complained that the contract did not reflect the changes he indicated, and

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8/ The denials of Ortiz are not credited.

9/ In his testimony, Ortiz listed as the areas of the contract which had not been fully agreed upon: -- (1) Respondent's offer of only nine holidays, to be specified. (2) Respondent's counter offer of certain sums in successive years to be paid into a "Severance and Retirement Trust Fund. The Union said it would get back to him, but it never did. (3) Respondent's rejection of the entire clause providing for extra pay for the "general leader." (4) The Union was presented a list of rules and regulations to be included in the contract. Ortiz was told the Union would get back to him with changes in language, but it never did. (5) The naming of all the employees included in and excluded from the contract.

10/ Respondent's list, with certain limited alterations noted thereon by the Union, was received in evidence.

that he wanted the names of the unit employees. Edelstein suggested that he come to his office and talk about it. On May 27, Ortiz appeared at Edelstein's office. He was asked to sign now, and the matters he raised concerning holidays, bereavement pay and the severance plan would be worked out later. He refused. He said he had to know the number of employees in the unit in order to determine his costs. Edelstein requested, and he agreed, that the Union be allowed to examine his payroll book. Thereafter, Fleischer came to his office, looked at the payroll records, and left without comment. About June 3, he had another meeting at the union office during which Bernard and Martin Edelstein and Attorney Weinmann were present. 11/ The Union indicated it had 18 to 21 people in the shop, while he insisted there were only 3 or 4 employees in the unit. 12/ He refused to sign a contract without identification of the employees covered. He offered to bring his books, and the Union agreed. On July 10, he brought the payroll book at a "scheduled" meeting with Bernard and Martin Edelstein. He claimed that the Union's contract with Ponce, his "biggest competitor," contains the names of the unit employees, 13/ and that the Union had previously promised him a contract "similar" to that of Ponce. Again he refused to sign unless the included and excluded employees were named in the contract. And he declined the Union's offer to settle the matter in arbitration.

Martin Edelstein testified that, at a meeting on July 10, Ortiz was reminded to supply the Union with the revised copy of the rules and regulations. And, as a result of this meeting, Ortiz agreed to return to the union office on July 11 to sign the contract. He failed to appear, and Edelstein was unable to reach him by telephone. On July 15, Edelstein received a telephone message from Ortiz indicating the names of three employees, -- as Respondent's position on the limited coverage of the contract. The message also stated: "Rules and Regs will be mailed to you." On July 16, Edelstein called Ortiz and advised him that the Union was not accepting his list of names and that the contract must be resolved by the end of the week. Ortiz promised to come to the union office and sign on July 17 or 18. He did not appear.

To the extent of material conflict with the testimony of General Counsel's witnesses described above, Ortiz is not credited.

11/ Martin Edelstein could not recall such a meeting. Bernard Edelstein and Weinmann did not testify.

12/ It is noted that eight employees had earlier been reinstated under the terms of the settlement agreement.

13/ The Union's proposed contract provides for each employee classification the amounts of "across-the-board wage increases" and "minimum wages" effective on March 22 in 1975, 1976 and 1977. Similar clauses are in the Ponce contract. Ortiz had reference to an additional "Wage Schedule" in an appendix to Ponce's contract which lists the name of the employees and his particular wage. It is plain that the purpose of such an appendix pertains to wages, and does not circumscribe the coverage of the appropriate unit, which is set forth in the recognition clause of the contract.

D. Conclusions

As conceded by Respondent's counsel in opening remarks at the hearing, -- the only material issue in the refusal of Ortiz to sign the contract was the failure of the Union to specify in the contract the names of employees to be included in the appropriate unit. This posture of the case comports with the entire record. Indeed, I find that Ortiz did not demand the names of the unit employees until after negotiations had been completed on all matters of substance and subsequent to his receipt of the final revised contract for execution. It is my opinion that Ortiz raised such issue upon his own misconception of the legal purport of the Ponce contract and as a belated tactic to delay the signing of an agreement with the Union.

Respondent's position on the unit question is utterly without merit. For purposes of the Act, it is traditional that the appropriate unit is defined in terms of job classifications or categories of employees. Bargaining units, presumptively subject to employment fluctuation, cannot be limited to named employees. Such units would obviously conflict with the Act's principles of majority representation and stability of industrial relations. Respondent argues that it is entitled to know which employees would receive the increased wages and benefits negotiated in the contract. However, such knowledge is particularly within the competence of management, ascertainable from the classifications embraced in the unit. The naming of the unit employees in the contract can only provide temporary and negligible utility, if any at all. It cannot serve to redefine the unit or fix the number of employees contractually covered. This was Ortiz' essential purpose. Even assuming the existence of a genuine dispute as to which of the employees are currently in the unit, any such uncertainty presents a type of matter for which the contract's grievance-arbitration machinery is designed to resolve.

I find that, at the conclusion of the negotiations on April 28, the parties reached an oral binding agreement on all material aspects of a collective-bargaining contract. 14/ All that remained was the ministerial function of memorializing such agreement in a written document for execution by the parties. 15/ The task was promptly undertaken by the Union and a contract draft was presented to Respondent. 16/ Respondent had an equal

14/ E.g., Local Union Nos. 938 etc., of the International Brotherhood of Electrical Workers, AFL-CIO (Appalachian Power Company), 200 NLRB 850, 852; Ariel Offset Coal, Inc., 149 NLRB 1145, 1152.

15/ E.g., Teamsters Union Local No. 85, International Brotherhood of Teamsters, etc. (Tyler Bros. Drayage Co.), 206 NLRB 500, 505; Chauffeurs, Teamsters and Helpers Union, Local 186, affiliated with the International Brotherhood of Teamsters, etc. (Max Rudolph Trucking Company), 172 NLRB 788, 790.

16/ Respondent's counsel adverted to "small matters" which were not completed and could have been completed. As to certain provisions enumerated by Respondent, the parties had in fact reached agreement, as described infra. Whatever other minor issues remained, they were not obstacles to the signing of the contract upon the Union's request.

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obligation with the Union to act affirmatively, without undue delay, in finalizing the product of their negotiations. Instead, for an invalid reason Respondent refused to sign the contract submitted by the Union. And, by purposefully creating delays, it further acted in bad faith in failing to fulfill the bargaining obligation to which it was committed under the settlement agreement of March 21. Accordingly, I conclude that, by its refusal on or about May 2 and thereafter to execute the negotiated contract, Respondent violated Section 8(a)(5) and (1), as alleged.

III. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As part of the remedy, General Counsel requests that Respondent be ordered to make whole all employees for any loss suffered by reason of its failure to sign and comply with the contract it reached with the Union. Respondent's liability to the employees is a contractual matter. The parties have agreed to specific terms of a three year contract made retroactive to March 22, 1975. Respondent will be ordered to execute such agreement, and its compliance with this Order will appropriately serve to compensate the employees retroactively for all wage and fringe benefits under the terms of the contract.

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All attendants, floorpeople, receptionists, interpreters and porters employed by Respondent, excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the Act, constitute an appropriate unit within the meaning of Section 9(b) of the Act.

4. The Union has been, and is now, the exclusive representative of the employees in the appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

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5. By failing and refusing to execute the contract to which the parties orally agreed on April 28, 1975, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the above findings of fact, conclusions of law, and the entire record in the case and pursuant to Section 10(c) of the Act, I hereby recommend the following: 17/

ORDER

The Respondent, Ortiz Funeral Home Corp., New York, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to execute, upon request, the collective-bargaining agreement which it reached on April 28, 1975, with the Union.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, execute the collective-bargaining agreement which it reached on April 28, 1975, with the Union.

(b) Post at all its offices and facilities in the City of New York, New York, copies of the notice attached hereto as "Appendix." 18/ Copies of said notice on forms provided by the Regional Director for Region 2, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

17/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

18/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D.C.

Benjamin B. Lipton

Benjamin B. Lipton
Administrative Law Judge

FORM NLRB-4727
(9-69)

APPENDIX 225 -307-76

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL IN WHICH BOTH SIDES HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE, THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE VIOLATED THE LAW AND HAS ORDERED US TO POST THIS NOTICE; AND WE INTEND TO CARRY OUT THE ORDER OF THE BOARD, AND ABIDE BY THE FOLLOWING:

WE WILL, upon request by LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, sign a contract containing the terms of our agreement reached with such UNION on April 28, 1976, covering the employees in the following bargaining unit:

All attendants, floorpeople, receptionists, interpreters and porters, excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the National Labor Relations Act.

ORTIZ FUNERAL HOME CORP.

Dated_____ By_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor - Federal Building, 26 Federal Plaza, New York, New York 10007 (Tel. No. (212) 264-0360)

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FILED
Exec. Sec. O

D--1616
New York, N.Y.

225 NLRB No. 197

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ORTIZ FUNERAL HOME CORP.

and

Case 2--CA--13804

LOCAL 1034, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FILE IN PUBLIC FILE
A

DECISION AND ORDER

On May 19, 1976, Administrative Law Judge Benjamin B. Lipton issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief and the Union filed an answering brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1/]

1/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

and conclusions of the Administrative Law Judge[2] and to adopt his recommended Order as modified below.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Ortiz Funeral Home Corp., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Insert the following as paragraph 1(b):

"b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C. SEP 16 1976

Betty Southard Murphy, Chairman

John H. Fanning, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

2/ The Respondent has excepted to the Administrative Law Judge's conduct of the hearing, alleging restrictions on its right to examine and cross-examine witnesses, bias, prejudice, and predetermination of the issues, and a denial of due process. After a careful examination of the entire record we are satisfied that these allegations are without merit. We think the Administrative Law Judge, in accordance with the Board's Rules and Regulations (Sec. 102.35), attempted to inquire fully into the facts and at the same time limit or exclude irrelevant or immaterial or unduly repetitious evidence. The Cavern Supply Company, Inc., 187 NLRB 160 (1970).

3/ In his recommended Order and notice the Administrative Law Judge inadvertently failed to provide that Respondent would not in any like or related manner interfere with the exercise of its employees' rights under Sec. 7 of the Act. The recommended Order has been modified accordingly.

D--1616

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL, upon request by Local 1034, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, sign a contract containing the terms of our agreement reached with such Union on April 28, 1975, covering the employees in the following bargaining unit:

All attendants, floorpeople, receptionists, interpreters and porters, excluding licensed embalmers, undertakers, drivers, managers, office clerical employees, bookkeepers, guards, watchmen and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under the Act.

ORTIZ FUNERAL HOME CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor - Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212--264--0360.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 76-4274
	)	
ORTIZ FUNERAL HOME CORP.,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the appendix in the above-captioned case has this day been served by first class mail upon the following counsel at the addresses listed below:

N. George Turchin, Esq.
253 Broadway
New York, New York 10007

Richard A. Weinmann, Esq.
221 Park Avenue S.
New York, New York 10003

Elliott Moore

Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.
this 4th day of March, 1977.